OFFICIAL MANUAL OF THE TENNESSEE REAL ESTATE COMMISSION

TITLE 62

PROFESSIONS, BUSINESSES AND TRADES

CHAPTER 13

REAL ESTATE BROKERS

PART 1—GENERAL PROVISIONS

62-13-101. Title. — This chapter shall be known and may be cited as the "Tennessee Real Estate Broker License Act of 1973." [Acts 1973, ch. 181, § 1; T.C.A., § 62-1301.]

Cross-References. Discriminatory housing practices, title 4, ch. 21, part 6.

Liability of professional societies, ch. 50, part 1 of this title.

Real estate appraiser, ch. 39 of this title.

Section to Section References. This chapter is referred to in §§ 62-19-102, 62-19-112, 62-25-103, 62-39-335, 66-32-102, 66-32-137.

Textbooks. Tennessee Jurisprudence, 5 Tenn. Juris., Brokers, §§ 3, 4, 15; 17 Tenn. Juris., Licenses, § 9.

Law Reviews. Rights and Liabilities of Real Estate Brokers in Tennessee, 23 Tenn. L. Rev. 1005.

Comparative Legislation. Real estate brokers:

Ala. Code § 34-27-1 et seq.
Ark. Code § 17-42-101 et seq.
Ga. O.C.G.A. § 43-40-1 et seq.
Ky. Rev. Stat. Ann. § 324.010 et seq.
Miss. Code Ann. § 73-35-1 et seq.
Mo. Rev. Stat. § 339.010 et seq.
N.C. Gen. Stat. § 93A-1 et seq.
Va. Code § 54.1-2100 et seq.

Cited: Stinson v. Potter, 568 S.W.2d 291 (Tenn. Ct. App. 1978); Chisholm v. Western Reserves Oil Co., 655 F.2d 94 (6th Cir. 1981); Skinner v. Steele, 730 S.W.2d 335 (Tenn. Ct. App. 1987).

NOTES TO DECISIONS

ANALYSIS

1. Constitutionality.

Chapter was not held unconstitutional under a variety of challenges, including an attack on the codification and enactment of the statutes. Dickerson v. Sanders Mfg. Co., 658 S.W.2d 535 (Tenn. Ct. App. 1983), overruled on other grounds, Business Brokerage Ctr. v. Dixon, 874 S.W.2d 1 (Tenn. 1994).

1.5. Purpose.

This chapter is designed to protect the public from irresponsible or unscrupulous persons dealing in real estate. Bowden Bldg. Corp. v. Tennessee Real Estate Comm'n, 15 S.W.3d 434 (Tenn. Ct. App. 1999).

2. Auction Sale.

Where the owners of a farm authorized complainants, as real estate brokers, to sell the farm at auction, and agreed to pay them a commission percentage if the price obtained was "satisfactory," the recovery of such percent-

age could not be defeated because the brokers instructed the auctioneer to bid for them at the sale, and the auctioneer did so, where it appears that such bidding was merely an attempt to make the farm bring a better price, and that complainants were not attempting to assume a position antagonistic to the defendants. Robeson v. Ramsey, 147 Tenn. 25, 245 S.W. 413 (1922).

3. Compensation Agreement.

A commission contract fixing the rate for all sales made within a certain period, when breached, entitles the agent to such commissions on sales made within that time, though made by others. Hagan v. Nashville Trust Co., 124 Tenn. 93, 136 S.W. 993 (1910).

4. —Exclusive Agency.

An exclusive agency contract was construed as authorizing the agent to sell, that is, to find a purchaser and to consummate a deal, and not authorizing the agent to execute a contract of sale or to give an option agreement for the sale of land. McFadden v. Crisler, 141 Tenn. 531, 213 S.W. 912 (1919).

A broker, with a contract entitling him to a commission on sale at a fixed price, did not show a performance entitling him to recover upon procuring an option contract of sale which was not exercised without any fault of the owner, since no absolute purchaser, ready, able, and willing to take the property, was procured. Burton v. Rose, 137 Tenn. 503, 194 S.W. 575 (1917).

5. —Paid.

Where the owners of a farm authorized complainants, as real estate brokers, to sell the farm at auction, and agreed to pay a commission percentage if the price obtained was "satisfactory," they could not defend the suit for commissions on the ground that the purchasers at the auction sale were not bound upon the ground that the memorandum of sale was insufficient under the statute of frauds, where such purchasers had not refused to comply with the terms of sale. Robeson v. Ramsey, 147 Tenn. 25, 245 S.W. 413 (1922).

6. —Revocation.

Where several persons bought a farm and had the title vested in certain trustees who issued certificates to each of the owners showing the amount each paid, and his interest in the land, and the trustees gave an exclusive agency contract to sell the land, and the certificate holders subsequently sold and transferred all the certificates to two other parties, such transfers constituted a sale of the land and revoked the agency, since there was no stipulation against the sale by the owners and it will never be presumed that an owner has deprived himself of the right to sell his land. McFadden v. Crisler, 141 Tenn. 531, 213 S.W. 912 (1919).

7. —Terms of Sale.

An agency contract authorizing the agent to sell land at a price fixed by the owner means a sale for cash, unless the contrary is stated. McFadden v. Crisler, 141 Tenn. 531, 213 S.W. 912 (1919).

8. Conflict of Interest.

Broker accepting employment from adverse party, without consent, forfeits compensation. Siler v. Perkins, 126 Tenn. 380, 149 S.W. 1060 (1912).

9. Counter Offer.

Where under its terms counter offer by vendor for sale of land expired July 1, but manner of acceptance was not specified, purchasers' notification of acceptance made to real estate brokers, who had shown land and with whom purchaser had dealt in the transaction, was binding on vendor where notice was prior to vendor's attempted withdrawal of offer on July 1. Dobson & Johnson, Inc. v. Waldron, 47 Tenn. App. 121, 336 S.W.2d 313 (1960).

10. Licensing.

Testimony of plaintiff that he was a licensed broker at the time that the events involved in the litigation were transpiring was sufficient to meet the requirements of this chapter where the issue of the plaintiff's broker's license is raised for the first time on appeal. Smithwick v. Young, 623 S.W.2d 284 (Tenn. Ct. App. 1981).

The restrictive provisions of this chapter only apply where an individual is acting for another; where he is acting on his own behalf, there is no requirement that a person acquire a real estate license before negotiating a conveyance of land. Hermitage House Square v. England, 929 S.W.2d 356 (Tenn. Ct. App. 1996).

11. Sales Commission.

Where defendants, the owners of a farm, authorized complainants, as real estate agents, to sell the farm at auction, and agreed that if the property did not sell for a price that was "satisfactory" to them they were to pay a certain amount for services rendered, but if they confirmed the sale, then they were to pay five per cent of the sale price, where the farm brought a price in excess of its value, and with which the owners, as reasonable men, should have been satisfied, they could not, in an action for the percentage, claim that they had refused to confirm because the price was not "satisfactory." Robeson v. Ramsey, 147 Tenn. 25, 245 S.W. 413 (1922).

12. —Amount.

A real estate agent, employed to sell property without any special contract as to his compensation, will be entitled to prove and recover such reasonable commissions as, for similar services, real estate agents in that particular locality are, by usage and custom, entitled. Arrington v. Cary, 64 Tenn. 609 (1875); Penn-

sylvania R.R. v. Naive, 112 Tenn. 239, 79 S.W. 124 (1903).

13. —Auction Sales.

Where the owners of a farm authorized real estate agents to sell the farm at auction, and agreed to pay them a certain percentage, if the sale was satisfactory and they confirmed it and it appeared that at the sale the auctioneer announced that there would be no by bidding, the owners not contradicting such announcement, the owners could not, after by-bidders procured by them had bid in certain portions of the land, contend in a controversy with the real estate agents as to their commissioners that such bids were not valid and binding. Robeson v. Ramsey, 147 Tenn. 25, 245 S.W. 413 (1922).

14. —Not Paid.

Commissions were disallowed for parol sale. Gilchrist v. Clarke, 86 Tenn. 583, 8 S.W. 572 (1888).

No commissions for first talking to a purchaser where the sale was made by another agent. Glascock v. Vanfleet, 100 Tenn. 603, 46 S.W. 449 (1898).

A real estate agent is not entitled to commissions when he does not produce the purchaser, nor make the sale, nor inform the owner of the prospective purchaser who learned that the land was for sale and the name of the owner thereof, independent of the agent and at the same time the agent learned the facts. Nance v. Smyth, 118 Tenn. 349, 99 S.W. 698 (1907).

A broker to sell property is not entitled to a commission on the earnest money paid and forfeited to the seller under an option contract, for the broker must rely upon the option ripening into a sale absolute for his commission, or upon the fact that the option purchaser is ready, able, and willing to take a deed thereunder. Burton v. Rose, 137 Tenn. 503, 194 S.W. 575 (1917).

15. —Paid.

Where a real estate broker, employed to sell land, produces or first brings to the owner's notice a prospective purchaser to whom the owner makes the sale, such broker is entitled to his commissions. Arrington v. Cary, 64 Tenn. 609 (1875); Royster v. Mageveney, 77 Tenn. 148 (1882); Parker v. Walker, 86 Tenn. 566, 8 S.W. 391 (1888); Glascock v. Vanfleet, 100 Tenn. 603, 46 S.W. 449 (1898); Nance v. Smyth, 118 Tenn. 349, 99 S.W. 698 (1907).

A real estate broker is entitled to his commissions when he has effected a valid written contract for the sale of land. Parker v. Walker, 86 Tenn. 566, 8 S.W. 391 (1888); Gilchrist v. Clarke, 86 Tenn. 583, 8 S.W. 572 (1888); Siler v. Perkins, 126 Tenn. 380, 149 S.W. 1060 (1912).

A real estate agent is entitled to his commissions for the sale of land, when he has procured and presented to his principal a purchaser who is ready, able, and willing to purchase the land and comply with the required terms of sale. Cheatham v. Yarbrough, 90 Tenn. 77, 15 S.W. 1076 (1891); Nance v. Smyth, 118 Tenn. 349, 99 S.W. 698 (1907); Siler v. Perkins, 126 Tenn. 380, 149 S.W. 1060 (1912).

A real estate broker, when the actual moving and efficient cause of the sale, is entitled to his commission. Glascock v. Vanfleet, 100 Tenn. 603, 46 S.W. 449 (1898); Nance v. Smyth, 118 Tenn. 349, 99 S.W. 698 (1907).

A real estate agent who brings the vendor and a proposed purchaser together is entitled to his commissions on the sale completed by the vendor. Nance v. Smyth, 118 Tenn. 349, 99 S.W. 698 (1907).

16. —Sale by Owner.

A real estate broker is entitled to compensation for bringing the parties together, where they consummate the trade, with changes, in the absence of the broker and after telling him there was nothing further he could do. Siler v. Perkins, 126 Tenn. 380, 149 S.W. 1060 (1912).

A real estate agent is not entitled to commissions for a sale where the purchase was made from the owner, though the purchaser's attention was called to the property by the newspaper advertisement of the agent. Charlton v. Wood, 58 Tenn. 19 (1872); Nance v. Smyth, 118 Tenn. 349, 99 S.W. 698 (1907).

A real estate agent effecting a sale to a satisfactory purchaser, upon the owner's terms, after the owner had made a sale without notice to the agent, is entitled to full commissions as for a sale. Woodall v. Foster, 91 Tenn. 195, 18 S.W. 241 (1891); Siler v. Perkins, 126 Tenn. 380, 149 S.W. 1060 (1912).

17. —Salesman.

A real estate salesman merely worked for and was under the control of the real estate broker and was "engaged by and on behalf of a licensed real estate broker" and did not perform services for which he could have claimed commission. Turnblazer v. Smith, 214 Tenn. 277, 379 S.W.2d 772 (1964).

Collateral References. 12 Am. Jur. 2d Brokers, §§ 6-29.

53 C.J.S. Licenses § 6.

Application of statute denying access to courts or invalidating contracts where corporation fails to comply with regulatory statute as affected by compliance after commencement of action. 23 A.L.R.5th 744.

Broker's right to compensation as affected by lack of license on the part of partners, coadventurers, employees, or other associates. 8 A.L.R.3d 523.

Constitutionality of statute or ordinance requiring real estate brokers to procure a license. 39 A.L.R.2d 606.

Disqualification, for bias or interest, of member of occupation or profession sitting in license revocation proceeding. 97 A.L.R.2d 1210.

Duty of real estate broker to disclose identity of purchaser or lessee. 2 A.L.R.3d 1119.

Grounds for revocation or suspension of license of real estate broker or salesman. 56 A.L.R.2d 573; 22 A.L.R.4th 136; 7 A.L.R.5th 474.

Liability of real estate broker or agent to principal for concealing or failing to disclose offer. 7 A.L.R.3d 693.

Liability of vendor's real estate broker or agent to purchaser or prospect for misrepresenting or concealing offer or acceptance. 55 A.L.R.2d 342.

Modern view as to right of real estate broker to recover commission from seller-principal where buyer defaults under valid contract of sale. 12 A.L.R.4th 1083.

Necessity of having real-estate broker's license in order to recover commission as affected by fact that business sold includes real property. 82 A.L.R.3d 1139.

Procurement of real-estate broker's license subsequent to execution of contract for services as entitling broker to compensation for services. 80 A.L.R.3d 318.

Nonresident broker, application and effect of statute as to licensing of real estate brokers. 86 A.L.R. 640; 159 A.L.R. 274.

Real estate broker's power to find principal by representations as to character, condition, location, quantity, or title of property. 58 A.L.R.2d 10.

Right of attorney to act as real estate broker without having been licensed as such. 23 A.L.R.4th 230.

Right to attack validity of statute, ordinance, or regulation relating to occupational or professional license as affected by applying for or securing license. 65 A.L.R.2d 660.

Suspension or revocation of real estate broker's license on ground of discrimination. 42 A.L.R.3d 1099.

Brokers ⇦ 3, 42, 80, 84(1).

Licenses ⇦ 39.

62-13-102. Chapter definitions. — As used in this chapter, unless the context otherwise requires:

(1) "Acquisition agent" means a person who by means of personal inducement, solicitation, or otherwise attempts directly to encourage any person to attend a sales presentation for a time-share program; provided, however, that "acquisition agent" shall not include any person, or that person's employee, who engages in any such activity solely on real property owned or leased by such person on or within the premises of a hotel, motel, private resort or lodging rental office or phone or mail solicitation business;

(2) "Adverse facts" means conditions or occurrences generally recognized by competent licensees that have negative impact on the value of the real estate, significantly reduce the structural integrity of improvements to real property or present a significant health risk to occupants of the property;

(3) "Affiliate broker" means any person engaged under contract by or on behalf of a licensed broker to participate in any activity included in subdivision (4);

(4)(A) "Broker" means any person who for a fee, commission, finders fee or any other valuable consideration, or with the intent or expectation of receiving the same from another, solicits, negotiates or attempts to solicit or negotiate the listing, sale, purchase, exchange, lease or option to buy, sell, rent or exchange for any real estate or of the improvements thereon or any time-share interval as defined in the Tennessee Time-Share Act, compiled in title 66, chapter 32, part 1, collects rents or attempts to collect rents, auctions or offers to auction, or who advertises or holds out as engaged in any of the foregoing;

(B) "Broker" also includes any person employed by or on behalf of the owner or owners of lots or other parcels of real estate, at a salary, fee, commission, or any other valuable consideration, to sell such real estate or any part thereof, in lots or parcels or other disposition thereof. It also

includes any person who engages in the business of charging an advance fee or contracting for collection of a fee in connection with any contract whereby the person undertakes primarily to promote the sale of real estate either through its listing in a publication issued primarily for such purpose, or for referral of information concerning such real estate to brokers, or both;

(5) "Client" means a party to a transaction with whom the broker has entered into a specific written agency agreement to provide services;

(6) "Customer" means any party, other than a client in a transaction, for whom or to whom a licensee provides services;

(7) "Designated agent" refers to a licensee who has been chosen by such licensee's managing broker to serve as the agent of an actual or prospective party to a transaction, to the exclusion of other licensees employed by or affiliated with such broker;

(8) "Dual agency" refers to a situation in which the licensee has agreements to provide services as an agent to more than one (1) party in a specific transaction and in which the interests of such parties are adverse;

(9) "Facilitator" means any licensee:

(A) Who assists one (1) or more parties to a transaction who has not entered into a specific written agency agreement representing one (1) or more of the parties; or

(B) Whose specific written agency agreement provides that if the licensee or someone associated with the licensee also represents another party to the same transaction, such licensee shall be deemed to be a facilitator and not a dual agent; provided, that notice of assumption of facilitator status is provided to the buyer and seller immediately upon such assumption of facilitator status, to be confirmed in writing prior to execution of the contract. A facilitator may advise either or both of the parties to a transaction but cannot be considered a representative or advocate of either party. "Transaction broker" may be used synonymously with, or in lieu of, "facilitator" as used in any disclosures, forms or agreements under this chapter;

(10) "Limited agency" means an agency relationship created for the purpose of providing real estate services in which the client's or other party's liability for the actions or statements of an agent, subagent or facilitator is limited to actions or statements initiated by specific instruction of the client or other party, or those actions or statements about which the client or other party had knowledge;

(11) "Material" means any statement, representation or fact relative to a transaction that would affect a reasonable person's decision to enter into an agreement and which has been identified by such person as being of significance to a particular party;

(12) "Party" means any person or persons seeking to obtain or divest an interest in real estate or a business opportunity as a buyer, seller, landlord, tenant, option grantee or option grantor;

(13) "Person" means and includes individuals, corporations, partnerships or associations, foreign and domestic;

(14) "Real estate" means and includes leaseholds, as well as any other interest or estate in land, whether corporeal, incorporeal, freehold or nonfreehold, and whether the real estate is situated in this state or elsewhere;

(15) "Time-share salesperson" means any person acting as a seller of any time-share interval under contract with or control of a licensed real estate broker pursuant to a registered time-share program. Notwithstanding any provision of law to the contrary, a licensed broker or affiliate broker is entitled to sell time-share intervals pursuant to a registered time-share program; and

(16) "Transaction" means the purchase, sale, rental, or option of an interest in real estate or business opportunity. [Acts 1973, ch. 181, § 3; 1981, ch. 372, § 32; 1981, ch. 473, § 1; T.C.A., § 62-1302; Acts 1989, ch. 89, § 1; 1995, ch. 246, § 1; 1996, ch. 772, §§ 1-3; 2002, ch. 812, § 1.]

Amendments. The 2002 amendment added present (1) and redesignated former (1) through (15) as present (2) through (16).

Effective Dates. Acts 2002, ch. 812, § 9. June 11, 2002.

Cross-References. Occupation tax on brokers, title 67, ch. 4, part 17.

Single act identifies broker or affiliate, § 62-13-103.

Section to Section References. This section is referred to in §§ 62-13-103, 62-13-104, 62-13-113, 62-13-301, 62-13-318, 66-32-102, 67-4-1702.

Textbooks. Tennessee Jurisprudence, 5 Tenn. Juris., Brokers, § 4; 17 Tenn. Juris., Licenses, § 9.

Cited: Prowell v. Parks, 767 S.W.2d 633 (Tenn. 1989); Hermitage House Square v. England, 929 S.W.2d 356 (Tenn. Ct. App. 1996).

NOTES TO DECISIONS

ANALYSIS

1. Broker.
2. Real estate.
3. Affiliate broker.

1. Broker.

Where seller informed plaintiff broker that his farm was for sale on certain terms to anyone, but there was no express contract of employment with broker and where seller specifically disavowed any obligation to pay commissions, the court found that plaintiff was not seller's broker and that seller had no implied liability for commissions. Billington v. Crowder, 553 S.W.2d 590 (Tenn. 1977).

The language used in this act is broad enough to include the sale of a going business involving an interest in real estate and to require a broker negotiating such a transaction to have a real estate license. Stinson v. Potter, 568 S.W.2d 291 (Tenn. Ct. App. 1978).

Company which solicited the listing of defendant's real estate at defendant's Tennessee offices, negotiated the terms of the listing with defendant's in-house counsel in Nashville, and entered into a sales listing agreement upon defendant's promise to pay a real estate commission, was acting as a broker within the meaning of this section and § 62-13-103 when it committed these acts, and was therefore required to comply with the licensing requirements of this chapter. Binswanger S. (N.C.), Inc. v. Textron, Inc., 860 S.W.2d 862 (Tenn. Ct. App. 1993).

An owner of property who lists or sells its own interest in property is not a broker requiring licensing. Bowden Bldg. Corp. v. Tennessee Real Estate Comm'n, 15 S.W.3d 434 (Tenn. Ct. App. 1999).

Any person, other than an owner of property who lists or sells its own interest but including an employee or other agent of the owner, who lists or sells that property qualifies as a broker if that broker receives or expects to receive any valuable consideration that is associated with their efforts in soliciting or negotiating the listing, sale or purchase of the real estate. Bowden Bldg. Corp. v. Tennessee Real Estate Comm'n, 15 S.W.3d 434 (Tenn. Ct. App. 1999).

2. Real Estate.

Plaintiff, as a stranger to the partnership, cannot benefit from the legal fiction that real estate held by a partnership is considered personalty between the partners. Dickerson v. Sanders Mfg. Co., 658 S.W.2d 535 (Tenn. Ct. App. 1983), overruled on other grounds, Business Brokerage Ctr. v. Dixon, 874 S.W.2d 1 (Tenn. 1994).

Business broker is not precluded from recovering a commission if the real estate component is "merely incidental" to the sale of the entire business. Business Brokerage Ctr. v. Dixon, 874 S.W.2d 1 (Tenn. 1994).

Where the sale of a business involves only a transfer of stock, the real estate owned by the corporation should be viewed as incidental to the sale unless it is the business' principal asset. March Group, Inc. v. Bellar, 908 S.W.2d 956 (Tenn. Ct. App. 1995).

3. Affiliate Broker.

There is no appreciable difference between a "real estate salesman" and an "affiliate broker";

an affiliate broker is still under the direction and control of a licensed broker and engaged by the broker to do the broker's bidding. Coldwell Banker v. KRA Holdings, 42 S.W.3d 868 (Tenn. Ct. App. 2000).

62-13-103. Broker or affiliate identified by single act. — (a) Any person who, directly or indirectly for another, with the intention or upon the promise of receiving any valuable consideration, offers, attempts or agrees to perform, or performs, any single act defined in § 62-13-102, whether as a part of a transaction, or as an entire transaction, is deemed a broker, affiliate broker or time-share salesperson within the meaning of this chapter.

(b) The commission of a single such act by a person required to be licensed under this chapter and not so licensed constitutes a violation thereof. [Acts 1973, ch. 181, § 4; T.C.A., § 62-1304; Acts 1989, ch. 89, § 2.]

Cross-References. Penalty, § 62-13-110.

Textbooks. Tennessee Jurisprudence, 17 Tenn. Juris., Licenses, § 9.

Cited: Prowell v. Parks, 767 S.W.2d 633 (Tenn. 1989).

NOTES TO DECISIONS

1. Party Held to Be Broker.

Company which solicited the listing of defendant's real estate at defendant's Tennessee offices, negotiated the terms of the listing with defendant's in-house counsel in Nashville, and entered into a sales listing agreement upon defendant's promise to pay a real estate commission, was acting as a broker within the meaning of § 63-13-102 and this section when it committed these acts, and was therefore required to comply with the licensing requirements of this chapter. Binswanger S. (N.C.), Inc. v. Textron, Inc., 860 S.W.2d 862 (Tenn. Ct. App. 1993).

Salaried employees used to sell real estate for corporation engaged in the business of acquiring and selling real estate for its own account, were required to possess a real estate broker's license, despite that the employees were not paid on a commission basis in relation to the value of the corporate real estate sold by the representative. Bowden Bldg. Corp. v. Tennessee Real Estate Comm'n, 15 S.W.3d 434 (Tenn. Ct. App. 1999).

62-13-104. Exemptions — Firm licenses for vacation lodging services. — (a) The provisions of this chapter do not apply to:

(1) An owner of real estate with respect to property owned or leased by such person;

(2) An attorney-in-fact under a duly executed and recorded power of attorney from the owner or lessor;

(3) The services rendered by an attorney at law in the performance of duties as such attorney at law;

(4) A person acting as receiver, trustee in bankruptcy, administrator, executor or guardian, trustee acting under a trust agreement, deed of trust or will, or while acting under a court order or instrument;

(5) A resident manager for a broker or an owner, or employee of a broker, who manages an apartment building, duplex or residential complex where such person's duties are limited to supervision, exhibition of residential units, leasing and/or collection of security deposits and rentals from such property. The resident manager or employee shall not negotiate the amounts of security deposits or rentals and shall not negotiate any leases on behalf of the broker; or

(6) A corporation, foreign or domestic, acting through an officer duly authorized to engage in such real estate transaction, where the transaction

occurs as an incident to the management, lease, sale or other disposition of real estate owned by the corporation; however, this exemption does not apply to a person who performs an act described in § 62-13-102(4)(A) either as a vocation or for compensation, if the amount of the compensation is dependent upon, or directly related to, the value of the real estate with respect to which the act is performed; or

(7) The services performed by a vacation lodging business pursuant to subsection (b).

(b)(1) As used in this chapter, unless the context otherwise requires:

(A) "Person" means any natural person, corporation, company, partnership, firm or association; and

(B) "Vacation lodging service" means any person who engages in the business of providing the services of management, marketing, booking and rental of residential units owned by others as sleeping accommodations furnished for pay to transients or travelers staying not more than fourteen (14) days.

(2) Each vacation lodging service shall be required to have a firm license but shall not be required to have a licensed real estate broker supervising such business. The application for such license shall be filed in the office of the real estate commission on such forms as the commission may prescribe and shall be accompanied by a fee for the issuance of such license as specified in § 62-13-308. A real estate firm license held by a real estate broker is deemed to satisfy the license requirements of subsection (b).

(3)(A) Firm licenses for vacation lodging services shall be granted to all applicants who bear a good reputation for honesty, trustworthiness, integrity and competence to transact the business of providing vacation lodging services in such manner as to safeguard the interest of the public, and only after satisfactory proof of such qualifications has been presented to the commission. No license shall be denied any person because of race, color, religion, sex or national origin.

(B) Upon application for a firm license for a vacation lodging service and each renewal thereof, the firm shall designate one (1) individual from that firm who shall be responsible for the completion of training programs consisting of instruction in the fundamentals of subsection (b) and related topics. Every two (2) years, as a requisite for the reissuance of a firm license for a vacation lodging service, the firm shall furnish certification of completion of eight (8) classroom hours in training programs approved by the commission. No examination shall be required for the issuance or renewal of a firm license for a vacation lodging service.

(C) Upon application for a firm license for a vacation lodging service and each renewal thereof, the firm shall provide proof of the establishment of the firm's escrow account satisfactory to the commission. Every firm shall, in accordance with the rules promulgated by the commission under § 62-13-203, keep an escrow or trustee account of funds deposited with the firm relating to vacation lodging services. The vacation lodging service shall maintain for a period of at least three (3) years accurate records of such account showing:

(i) The depositor of the funds;

(ii) The date of deposit;

(iii) The date of withdrawal;

(iv) The payee of the funds; and

(v) Such other pertinent information as the commission may require.

(D)(i) No funds shall be distributed from the escrow/trustee account until the customer's stay is complete, unless such distribution is in accordance with terms disclosed to the renter in writing at the time of making the reservation, or within a reasonable time thereafter not to exceed three (3) days, mailed to the renter through the United States postal service or transmitted to the renter via electronic mail, facsimile, or other tangible form of communication. Commissions earned by the firm and the revenue due owners shall be disbursed at least monthly. Funds held in escrow shall be disbursed in a prompt manner without unreasonable delay.

(ii) A vacation lodging service may be exempt from the requirements of subdivision (b)(3)(C) by submitting with its application for a firm license renewal an irrevocable letter of credit from a state or national bank or state or federal savings and loan association having its principal office in Tennessee; or any state or national bank or state or federal savings and loan association that has its principal office outside this state and that maintains one (1) or more branches in this state which are authorized to accept federally insured deposits. The terms and conditions of any irrevocable letter of credit shall be subject to the approval of the commission. At the discretion of the bank or savings and loan association, the form of such irrevocable letter of credit shall be provided by the bank or savings and loan association and may be based on either the Uniform Commercial Code, compiled in title 47, chapter 5, or the ICC Uniform Customs and Practice for Documentary Credits (UCP 500). In lieu of the irrevocable letter of credit, the commission is authorized to accept equivalent security. The irrevocable letter of credit or equivalent security shall be in the amount of the vacation lodging service's average advanced monthly deposits or such other lesser amount as is reasonably determined by the commission to protect the renters and owners. The commission may draw upon the irrevocable letter of credit or equivalent security to reimburse renters or owners for funds owed to them by the vacation lodging service. The commission shall offer the vacation lodging service a contested case hearing under the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, before drawing upon the irrevocable letter of credit or equivalent security if the vacation lodging service continues to maintain the letter of credit or equivalent security during the contested case hearing process. If the vacation lodging service does not continue to maintain the irrevocable letter of credit or equivalent security during the contested case hearing process and the irrevocable letter of credit or equivalent security is subject to expiring during the contested case hearing process, the commission may draw upon the irrevocable letter of credit or equivalent security before conducting the contested case hearing. Where the commission draws upon the irrevocable letter of credit or equivalent security before conducting a contested case hearing, the commission shall offer the vacation lodging service a prompt hearing to be conducted before it distributes the proceeds.

(4) All firm licenses for vacation lodging services shall expire on December 31 of each year, and shall be invalid on that date unless renewed. Such licenses

may be renewed on or before the expiration date by remitting to the commission the fee as set by the commission together with proof of the existence of the firm's escrow account satisfactory to the commission and certification of satisfactory completion of training pursuant to subdivision (b)(3)(B).

(5) Each vacation lodging service shall have an office at a fixed location with adequate facilities, located to conform with zoning laws and ordinances. Within ten (10) days after any change of location of such office, the vacation lodging service shall notify the commission in writing of the new business address.

(6) Whenever any person claiming to have been injured or damaged by the gross negligence, incompetency, fraud, dishonesty or misconduct on the part of any licensee following the calling or engaging in the business of providing vacation lodging services files suit upon such claim against such licensee in any court of record in this state and recovers judgment thereon, such court may as a part of its judgment or decree in such cases, if it deems it a proper case in which so to do, revoke the certificate of license granted hereunder, and such certificate of license shall not be reissued to such licensee except upon the consenting vote of six (6) members in favor of such reissuance.

(7)(A) The commission may, upon its own motion, and shall, upon the verified complaint in writing of any person setting forth a cause of action under this section, ascertain facts and, if warranted, hold a hearing for reprimand, or for the suspension or revocation of a license.

(B) The commission has the power to refuse a license for cause or to suspend or revoke a license where it has been obtained by false representation, or by fraudulent act or conduct, or where a licensee, in performing or attempting to perform any of the acts mentioned herein, is found guilty of:

(i) Making any substantial and willful misrepresentation;

(ii) Making any promise of a character likely to influence, persuade or induce any person to enter into any contract or agreement when the licensee could not or did not intend to keep such promise;

(iii) Pursuing a continued and flagrant course of misrepresentation or making of false promises through other persons, any medium of advertising, or otherwise;

(iv) Misleading or untruthful advertising, including use of the term "Realtor" by a person not authorized to do so, or using any other trade name or insignia or membership in any real estate association or organization, of which the licensee is not a member. No vacation lodging service doing business under the provisions of this subsection (b) may advertise or hold itself out as a full service real estate business. The authority of such business is limited to those activities described within this subsection (b);

(v) Failing, within a reasonable time, to account for or to remit any moneys coming into the licensee's possession which belong to others;

(vi) Failing to preserve for three (3) years accurate records of the firm's escrow account as prescribed by subdivision (b)(3)(C);

(vii) Failing to furnish a copy of any contract to provide vacation lodging services to all signatories thereof at the time of execution;

(viii) Using or promoting the use of any contract to provide vacation

lodging services for a residential unit which fails to specify a definite termination date;

(ix) Being convicted in a court of competent jurisdiction of this or any other state, or federal court, of forgery, embezzlement, obtaining money under false pretenses, bribery, larceny, extortion, conspiracy to defraud, or any similar offense or offenses, or pleading guilty or nolo contendere to any such offense or offenses;

(x) Violating any federal, state, or municipal law prohibiting discrimination in the rental of real estate because of race, color, religion, sex or national origin;

(xi) Violating any provision of this subsection (b) or the terms of any lawful order entered by the commission;

(xii) Engaging in the unauthorized practice of law; or

(xiii) Any conduct, whether of the same or a different character from that hereinbefore specified, which constitutes improper, fraudulent or dishonest dealing.

(C) The director of the division of regulatory boards or the director's duly authorized representatives may, at all reasonable hours, examine and copy such books, accounts, documents, or records as are relevant to a determination of whether a licensee has properly maintained and disbursed funds from escrow or trustee accounts herein required. In the case of refusal to permit the access accorded by this subsection, the director or the director's authorized representatives may pursue the remedies provided by § 4-5-311(b) for disobedience to any lawful agency requirement for information. Such refusal shall also constitute grounds for the commission to suspend or revoke a license.

(D) Whenever any licensee pleads guilty or is convicted of any criminal offense enumerated in this section, the licensee must within sixty (60) days notify the commission of that conviction and provide the commission with certified copies of the conviction. The licensee's license shall automatically be revoked sixty (60) days after the licensee's conviction unless the licensee makes a written request to the commission for a hearing during that sixty-day period. Following any such hearing held pursuant to this section, the commission in its discretion may impose upon that licensee any sanction permitted by this section.

(8)(A)(i) Before refusing to issue a license or suspending or revoking an existing license upon the verified written complaint of any person setting out a cause of action under subdivision (b)(7), the commission shall, in writing, notify the accused applicant or licensee of its receipt of the complaint, enclosing a copy.

(ii) The accused applicant or licensee shall, within ten (10) days, file with the commission the applicant's or licensee's answer to the complaint, a copy of which shall be transmitted to the complainant.

(iii) If, after investigation, the commission determines that the matter should have a hearing, a time and place therefor shall be set.

(B) All notices and answers required or authorized to be made or filed under this subsection may be served or filed personally, or by registered mail, to the last known business address of the addressee. If served

personally, the time shall run from the date of service and if by registered mail, from the postmarked date of the letter enclosing the document.

(C) The affirmative vote of a majority of the commission shall be necessary to reprimand a licensee or revoke or suspend a license.

(D) In the event that the matter contained in the complaint shall have been filed or made a part of a case pending in any court in this state, the commission may then withhold its decision until the court action has been concluded. [Acts 1973, ch. 181, § 5; 1977, ch. 207, § 1; T.C.A., § 62-1307; Acts 1988, ch. 469, § 1; 1998, ch. 881, §§ 1-4; 2003, ch. 277, §§ 1, 2.]

Amendments. The 2003 amendment added (b)(3)(D) and substituted "each year" for "each even-numbered year" in (b)(4).

Effective Dates. Acts 2003, ch. 277, § 3. June 4, 2003.

Cross-References. Certified mail instead of registered mail, § 1-3-111.

Section to Section References. This section is referred to in § 62-13-301.

Textbooks. Tennessee Jurisprudence, 5 Tenn. Juris., Brokers, §§ 4, 15.

NOTES TO DECISIONS

ANALYSIS

1. Power of attorney.
2. Failure to satisfy exemption.

1. Power of Attorney.

Power of attorney exclusion referred to power of attorney authorizing performance of ministerial acts and did not apply to power of attorney involving exercise of discretion, hence power of attorney to unlicensed real estate agent to consummate sale of property was not within the statutory exclusion. Brown v. Van Pelt, 37 Tenn. App. 352, 263 S.W.2d 956 (1953).

2. Failure to Satisfy Exemption.

Failure to satisfy both requirements in T.C.A. § 62-13-104(a)(6) removes employees from the section's exemption, and employees would be required to possess a real estate broker's license. Bowden Bldg. Corp. v. Tennessee Real Estate Comm'n, 15 S.W.3d 434 (Tenn. Ct. App. 1999).

Salaried employees used to sell real estate for corporation who were not paid on a commission basis in relation to the value of the corporate real estate, did not satisfy the exemption contained in T.C.A. § 62-13-104(a)(6); the employees must also be corporate officers authorized to engage in such real estate transactions, and must not perform such real estate services as a vocation. Bowden Bldg. Corp. v. Tennessee Real Estate Comm'n, 15 S.W.3d 434 (Tenn. Ct. App. 1999).

62-13-105. Action by broker to collect compensation. — No action or suit shall be instituted, nor recovery be had by any person, in any court of this state for compensation for any act done or service rendered, the doing or rendering of which is prohibited under the provisions of this chapter to other than by licensed brokers, affiliate brokers or time-share salespersons, unless such person was duly licensed hereunder as a broker, affiliate broker or time-share salesperson at the time of performing or offering to perform any such act or service, or procuring any promise or contract or the payment of compensation for any such contemplated act or service. [Acts 1973, ch. 181, § 6; 1981, ch. 473, § 3; T.C.A., § 62-1308; Acts 1989, ch. 89, §§ 3, 4.]

Textbooks. Tennessee Jurisprudence, 5 Tenn. Juris., Brokers, § 23; 17 Tenn. Juris., Licenses, §§ 9, 23.

Cited: Chisholm v. Western Reserves Oil Co., 655 F.2d 94 (6th Cir. 1981); Prowell v. Parks, 767 S.W.2d 633 (Tenn. 1989); Binswanger S. (N.C.), Inc. v. Textron, Inc., 860 S.W.2d 862 (Tenn. Ct. App. 1993); Bowden Bldg. Corp. v. Tennessee Real Estate Comm'n, 15 S.W.3d 434 (Tenn. Ct. App. 1999).

NOTES TO DECISIONS

ANALYSIS

1. In General.

No commissions without a license. Stevenson v. Ewing, 87 Tenn. 46, 9 S.W. 230 (1888); Singer Mfg. Co. v. Draper, 103 Tenn. 262, 52 S.W. 879 (1899); Watterson v. Mayor of Nashville, 106 Tenn. 410, 61 S.W. 782 (1901); Pile v. Carpenter, 118 Tenn. 288, 99 S.W. 360 (1906).

The language used in this act is broad enough to include the sale of a going business involving an interest in real estate and to require a broker negotiating such a transaction to have a real estate license. Stinson v. Potter, 568 S.W.2d 291 (Tenn. Ct. App. 1978).

A person, acting in good faith reliance upon a temporary license and the recording of his bond as authority to proceed as an affiliate broker, although not legally licensed, was entitled to recover a commission from a seller who was a building contractor and who was in a position to know the qualifications of real estate brokers and to deal at arms length with them because the licensing provisions are intended to protect the public and not persons in the same business dealing at arms length. Tackett v. Mullins, 612 S.W.2d 909 (Tenn. 1981).

2. Compensation.

Compensation embraces almost every form of recovery, including quantum meruit. Dickerson v. Sanders Mfg. Co., 658 S.W.2d 535 (Tenn. Ct. App. 1983), overruled on other grounds, Business Brokerage Ctr. v. Dixon, 874 S.W.2d 1 (Tenn. 1994).

3. Fraudulent Use of Section.

Unlicensed real estate broker who represented that he was a licensed broker was not entitled to retain earnest money for application on commission since fraud vitiated contract. Brown v. Van Pelt, 37 Tenn. App. 352, 263 S.W.2d 956 (1953).

Unlicensed plaintiff did not have an action in fraud and deceit despite this section where there were no allegations any defendants knew of this section or intended to use it to strike down the contract no matter what the outcome of sales negotiations and shield themselves behind the statute when brought to answer for their deed. Dickerson v. Sanders Mfg. Co., 658 S.W.2d 535 (Tenn. Ct. App. 1983), overruled on other grounds, Business Brokerage Ctr. v. Dixon, 874 S.W.2d 1 (Tenn. 1994).

4. Out-of-State Broker.

Plaintiff was not entitled to receive a commission on the sale of a going business including an interest in real estate since he did not have a Tennessee real estate broker's license while negotiating the sale of defendant's property in this state. Stinson v. Potter, 568 S.W.2d 291 (Tenn. Ct. App. 1978).

A real estate broker, licensed in a foreign state but not in Tennessee, may sue in Tennessee to recover a real estate commission for procuring a buyer in the foreign state for Tennessee real estate. Bennett v. MV Investors, 799 S.W.2d 221 (Tenn. Ct. App. 1990).

Inasmuch as the record reflected that none of the acts performed or services rendered by plaintiff, a real estate broker licensed in South Carolina but not Tennessee, was prohibited under Tennessee real estate statutes, plaintiff was not barred from maintaining an action for a commission in Tennessee because of the provisions of this section. Bennett v. MV Investors, 799 S.W.2d 221 (Tenn. Ct. App. 1990).

Inasmuch as plaintiff, a broker licensed in South Carolina but not Tennessee, worked in cooperation with licensed Tennessee brokers to procure a nonresident purchaser for property located in Tennessee, he did not need to be joined in litigation by the licensed Tennessee brokers with whom he was associated in order to enforce his right to a real estate commission. Bennett v. MV Investors, 799 S.W.2d 221 (Tenn. Ct. App. 1990).

5. Person Almost Licensed.

Real estate dealer who had been issued a license by virtue of payment of privilege tax, but had not complied with provisions requiring a license from real estate commission was not barred from suing for real estate commissions due where he was willing to immediately comply with such provisions. Farris v. McNew, 195 Tenn. 653, 263 S.W.2d 506 (1953).

"Almost licensed" doctrine, which waived sanctions for persons who violated regulatory acts in good faith during time they were actively attempting to complete licensing procedure, was not extended to unlicensed plaintiff, who had no intention of becoming licensed, who made single phone call to regulatory agency and was told, incorrectly, that no broker's license was necessary where real estate conveyance was incidental to greater manufacturing sale. Dickerson v. Sanders Mfg. Co., 658 S.W.2d 535 (Tenn. Ct. App. 1983), overruled on other grounds, Business Brokerage Ctr. v. Dixon, 874 S.W.2d 1 (Tenn. 1994).

6. Sale of Own Land.

Partner engaged in buying, subdividing and selling real estate was not precluded from suing for amount due from his share of profits earned

even though he did not have license where partners were engaged in selling their own property. Lloyd v. Wiseman, 51 Tenn. App. 401, 368 S.W.2d 303 (1963).

7. Sale of Business.

While a licensed broker could not employ unlicensed agents in conducting a real estate agency, a broker may hire a skilled professional to help put together a sale of a business. March Group, Inc. v. Bellar, 908 S.W.2d 956 (Tenn. Ct. App. 1995).

8. Affiliate Broker.

An affiliate broker lacks the legal capacity to bring an action directly against the broker's client. Coldwell Banker v. KRA Holdings, 42 S.W.3d 868 (Tenn. Ct. App. 2000).

62-13-106. Schools. — (a) The real estate commission is authorized and empowered to promulgate rules and regulations relative to the establishment and conducting of any course, courses of study or instruction which are designed to satisfy the educational requirements of § 62-13-303. The commission shall establish application fees for educational courses submitted for approval, which fees shall be deposited in the recovery fund interest account to be used by the commission for educational purposes.

(b) As a condition to meeting the requirements of § 62-13-303, any such course, course of study or instruction shall be established and conducted in accordance with the rules and regulations of the commission.

(c) It is unlawful for any person offering courses or conducting classes in real estate subjects to represent that its students are assured of passing examinations given by the commission for the issuance of licenses required by this chapter.

(d) A violation of this section is a Class C misdemeanor. [Acts 1973, ch. 181, §§ 8(g), 10; 1981, ch. 473, § 15; T.C.A., § 62-1331, 62-1332; Acts 1989, ch. 324, § 1; 1989, ch. 591, § 113.]

Cross-References. Penalty for Class C misdemeanor, § 40-35-111.

62-13-107. Clinics and institutes. — The real estate commission is authorized to conduct, hold or assist in conducting or holding real estate clinics, meetings, courses or institutes, and to incur the necessary expenses in connection therewith, which shall be open to all licensees. [Acts 1973, ch. 181, § 8(h); T.C.A., § 62-1333.]

Section to Section References. This section is referred to in § 62-13-208.

62-13-108. Study and research programs. — The real estate commission is authorized to assist educational institutions within this state in sponsoring studies, research and programs for the purpose of raising the standards of professional practice in real estate and the competence of licensees in the public interest. [Acts 1973, ch. 181, § 8(i); T.C.A., § 62-1334.]

Section to Section References. This section is referred to in § 62-13-208.

62-13-109. Injunctions authorized for enforcement. — In addition to the powers and duties otherwise conferred upon the commission herein, the commission is empowered to petition any circuit or chancery court having jurisdiction of any person in this state who is violating any of the provisions of

this chapter, either with or without a license hereunder, to enjoin such person from continuing such violation, and jurisdiction is conferred upon the circuit and chancery courts of this state to hear and determine such causes. [Acts 1973, ch. 181, § 18(d); T.C.A., § 62-1338.]

Cross-References. Discriminatory housing practices, title 4, ch. 21, part 6.

Section to Section References. This section is referred to in §§ 66-32-136, 66-32-137.

Cited: Bowden Bldg. Corp. v. Tennessee Real Estate Comm'n, 15 S.W.3d 434 (Tenn. Ct. App. 1999).

62-13-110. Penalties. — (a)(1) Any person acting as a broker, affiliate broker, time-share salesperson or acquisition agent without first obtaining a license commits a Class B misdemeanor.

(2) A corporation which violates subdivision (a)(1) is ineligible to obtain a license for a period of one (1) year from the date of conviction of such offense.

(b) Any person acting as a broker, affiliate broker, time-share salesperson or acquisition agent without first obtaining a license who has received any money, or the equivalent thereof, as a fee, commission, compensation or profit by or in consequence of a violation of any provision of this chapter, is, in addition, liable for a penalty of not less than the amount of the sum of money so received and not more than three (3) times the sum so received, as may be determined by the court, which penalty may be recovered in any court of competent jurisdiction by any person aggrieved. [Acts 1973, ch. 181, § 18(a), (b), (c); T.C.A., § 62-1339; Acts 1982, ch. 589, §§ 1, 2; 1982, ch. 864, §§ 11, 12; 1989, ch. 89, § 5; 1989, ch. 591, § 112; 2002, ch. 812, § 3.]

Amendments. The 2002 amendment deleted "or" following "affiliate broker" and inserted "or acquisition agent" and made a minor punctuation change in (a) and (b).

Effective Dates. Acts 2002, ch. 812, § 9. June 11, 2002.

Cross-References. Discriminatory housing practices, title 4, ch. 21, part 6.

Penalty for Class B misdemeanor, § 40-35-111.

Textbooks. Tennessee Jurisprudence, 5 Tenn. Juris., Brokers, § 5.

Cited: Prowell v. Parks, 767 S.W.2d 633 (Tenn. 1989); Hermitage House Square v. England, 929 S.W.2d 356 (Tenn. Ct. App. 1996); Bowden Bldg. Corp. v. Tennessee Real Estate Comm'n, 15 S.W.3d 434 (Tenn. Ct. App. 1999).

NOTES TO DECISIONS

ANALYSIS

1. Applicability of chapter.
2. Contract held unenforceable.
3. Damages.

1. Applicability of Chapter.

Company which solicited the listing of defendant's real estate at defendant's Tennessee offices, negotiated the terms of the listing with defendant's in-house counsel in Nashville, and entered into a sales listing agreement upon defendant's promise to pay a real estate commission, was acting as a broker within the meaning of §§ 62-13-102 and 62-13-103 when it committed these acts, and was therefore required to comply with the licensing requirements of this chapter. Binswanger S. (N.C.), Inc. v. Textron, Inc., 860 S.W.2d 862 (Tenn. Ct. App. 1993).

2. Contract Held Unenforceable.

When plaintiff offered and agreed to perform real estate brokerage services without a license, upon the promise of receiving a fee from defendant, it entered into a contract expressly condemned by a criminal statute of Tennessee, and was therefore barred as a matter of law from seeking to enforce the contract and from recovering damages for its breach. Binswanger S. (N.C.), Inc. v. Textron, Inc., 860 S.W.2d 862 (Tenn. Ct. App. 1993).

3. Damages.

The decision of whether treble damages are

warranted pursuant to this section is left to the discretion of the trial court. Business Brokerage Ctr. v. Dixon, 874 S.W.2d 1 (Tenn. 1994).

62-13-111. Hearing and judicial review. — The provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, govern all matters and procedures respecting the hearing and judicial review of any contested case, as defined therein, arising under this chapter. [Acts 1980, ch. 451, § 11; T.C.A., § 62-1343.]

Textbooks. Tennessee Jurisprudence, 5 Tenn. Juris., Brokers, § 6.

62-13-112. Errors and omissions insurance. — (a) Each licensee who is licensed under this chapter shall, as a condition to licensing, carry errors and omissions insurance to cover all activities contemplated under this chapter. The requirements of this section shall not apply to acquisition agents.

(b) Effective December 31, 1992, it is not mandatory that a person who has been issued a firm license obtain errors and omissions insurance in the name of the firm. Persons issued a firm license by the Tennessee real estate commission shall have the option of obtaining errors and omissions coverage in the name of the firm, in addition to the mandatory individual coverage for the brokers and affiliate brokers within the firm.

(c) The commission shall make the insurance required under this section available to each licensee by contracting with an insurance provider for errors and omissions insurance coverage for each licensee after competitive, sealed bidding in accordance with title 12, chapter 3.

(d) Any policy obtained by the commission shall be available to each licensee with no right on the part of the insurance provider to cancel coverage for any licensee, other than as set forth by the commission and in compliance with § 56-7-1803.

(e) Each licensee shall have the option of obtaining errors and omissions insurance independently, if the coverage contained in an independently obtained policy complies with the minimum requirements established by the commission.

(f) The commission shall determine the terms and conditions of coverage required under this section, including, but not limited to, the minimum limits of coverage, the permissible deductible, and the permissible exemptions.

(g) Each licensee shall be notified of the required terms and conditions of coverage for the policy at least thirty (30) days before the licensee's renewal date. A certificate of coverage, showing compliance with the required terms and conditions of coverage, shall be filed with the commission by the license renewal date by each licensee who elects not to participate in the insurance program administered by the commission.

(h) If the commission is unable to obtain errors and omissions insurance coverage to insure all licensees who choose to participate in the insurance program at a reasonable premium, in such amount as determined by the commission, the requirement of insurance coverage under this section shall be void during the applicable contract period.

(i) The errors and omissions insurance coverage required by this section shall become effective as a condition of license granting or renewal on December 31, 1990. If practical, the commission may offer the coverage on a voluntary basis before such date. [Acts 1989, ch. 79, § 1; 1991, ch. 305, § 1; 2002, ch. 812, § 4.]

Amendments. The 2002 amendment added the last sentence in (a).

Effective Dates. Acts 2002, ch. 812, § 9. June 11, 2002.

NOTES TO DECISIONS

1. Purpose.

The uniform requirement of errors and omissions insurance contained in T.C.A. § 62-13-112 serves to promote the objective of the Licensing Act (T.C.A. § 62-13-101 et seq.) — to protect purchasers against unfair and deceptive practices that are peculiar to the sale of real property — in all instances involving the sale of real property through any form of agent (whether it be an employee or otherwise). Bowden Bldg. Corp. v. Tennessee Real Estate Comm'n, 15 S.W.3d 434 (Tenn. Ct. App. 1999).

Part 2—Real Estate Commission

62-13-201. Creation — Members. — (a) There is hereby created the Tennessee real estate commission, hereinafter referred to as the "commission," which consists of nine (9) members appointed by the governor, each of whom shall be a resident of this state and shall possess good moral character.

(b) Seven (7) of the members shall each have been principally engaged as a licensed broker or affiliate broker in this state for at least five (5) years prior to the date of such member's appointment and shall be of recognized business standing.

(c)(1) Each of the remaining two (2) members of the commission shall be a person who is not engaged in or conducting the business, or acting in the capacity of a real estate broker or affiliate broker; nor shall such members be engaged in the business of real estate financing or development.

(2) Initially, the governor shall appoint one (1) such member for a term of three (3) years and one (1) such member for a term of four (4) years. Thereafter, all such members shall be appointed for terms as provided in subsection (d).

(d)(1) Every member of the commission shall be appointed for a term of five (5) years and until a successor is appointed and qualifies by subscribing to the constitutional oath of office, which shall be filed with the secretary of state.

(2) Any vacancy occurring on the commission shall be filled by the governor for the unexpired term.

(3) No members shall be appointed to succeed themselves for more than one (1) full term.

(4) The governor may remove any member of the commission for misconduct, incompetency, or willful neglect of duty.

(5) Three (3) members shall be appointed from the eastern grand division, three (3) members shall be appointed from the middle grand division and three (3) members shall be appointed from the western grand division. Not more than one (1) of the members appointed pursuant to subsection (c) shall reside in the same grand division. Not more than three (3) of the members appointed pursuant to subsection (b) shall reside in the same grand division. Notwithstanding any provision to the contrary, nothing in this chapter shall prevent

any commissioner who was appointed prior to January 1, 1993, from being reappointed.

(6) In making appointments to the commission, the governor shall strive to ensure that at least one (1) person serving on the commission is sixty (60) years of age or older and that at least one (1) person serving on the commission is a member of a racial minority. [Acts 1973, ch. 181, § 7(a)-(e); 1980, ch. 870, § 3; T.C.A., § 62-1309; Acts 1984, ch. 676, § 9; 1988, ch. 1013, § 31; 1993, ch. 172, §§ 1-3.]

Compiler's Notes. The regulatory board created by this section is attached to the division of regulatory boards in the department of commerce and insurance for purposes of administration, see §§ 4-3-1304, 56-1-301 — 56-1-306.

The real estate commission, created by this section, terminates June 30, 2005. See §§ 4-29-112, 4-29-226.

Acts 1993, ch. 172, § 4 provided that the persons appointed to fill the positions created by the amendment by this act to (a) shall be appointed from the middle grand division, and that the allocation of appointments pursuant to the amendment to (d) shall commence with the expiration of the term of vacancy in office which first occurs after April 13, 1993.

Cross-References. Discriminatory housing practices, title 4, ch. 21, part 6.

Grand divisions, §§ 4-1-201 — 4-1-204.

Per diem and travel expenses of members, § 56-1-307.

Real estate appraisers, ch. 39 of this title.

State examining boards, general provisions, title 4, ch. 19.

Section to Section References. This section is referred to in §§ 4-29-226, 62-32-102.

Law Reviews. Tennessee Civil Disabilities: A Systemic Approach (Neil P. Cohen), 41 Tenn. L. Rev. 253.

62-13-202. Commission a judicial body — Civil liability. — (a) The commission is declared to be a judicial body and the members or its employees are hereby granted immunity from any civil liability when acting in good faith in the performance of their duties under this chapter.

(b) Should litigation be filed against members of the commission arising from the performance of their duties under this chapter, the commissioners shall be defended by the attorney general and reporter. [Acts 1973, ch. 181, § 16(c); T.C.A., § 62-1310.]

Textbooks. Tennessee Jurisprudence, 5 Tenn. Juris., Brokers, § 6.

62-13-203. Organization — Powers. — (a) Upon qualification of the members appointed, the commission shall organize itself by selecting from its members a chair and a vice chair, and shall have the power to do all things necessary and proper for carrying out the provisions of this chapter not inconsistent with the laws of this state. The commission may promulgate and adopt such bylaws, rules and regulations as are reasonably necessary for such purpose. The promulgation and adoption of rules and regulations authorized by this section shall be pursuant to the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(b) The commission's rules and regulations may incorporate and establish canons of ethics and minimum acceptable standards of practice for licensees.

(c) Each member of the commission shall receive a certificate of appointment from the governor before entering upon the discharge of the duties of office.

(d) The commission, or any committee thereof, shall be entitled to the services of the attorney general and reporter, or the legal department of the state of Tennessee, in connection with the affairs of the commission.

(e) The commission may prefer a complaint for violation of this chapter before any court of competent jurisdiction, and it may take the necessary legal steps through the proper legal officer of the state to enforce the provisions of this chapter and collect the penalties provided herein. [Acts 1973, ch. 181, § 7(b), (c); 1981, ch. 473, § 4; T.C.A., § 62-1311; Acts 1987, ch. 419, §§ 1, 2.]

Cross-References. Representation by attorney general and reporter, § 8-6-301.

Section to Section References. This section is referred to in §§ 16-15-731, 62-13-104, 62-13-321.

62-13-204. Regulation of fees or commissions. — Nothing herein shall allow the commission to set fees or commissions for real estate contracts or transactions and if the practice is found to be in actual practice in the field, if because of action of the commission, all members of the commission shall forfeit their licenses. [Acts 1973, ch. 181, § 21; T.C.A., § 62-1312.]

62-13-205. Record of proceedings — Seal. — (a) The commission shall keep a record of its proceedings and shall adopt a seal of such design as it shall prescribe for the certification thereof.

(b) The executive director shall have custody and charge of the seal.

(c) Copies of all records and papers in the office of the commission, duly certified and authenticated by its seal, shall be received in evidence in all courts with like effect as the original. [Acts 1973, ch. 181, § 7(f); T.C.A., § 62-1313.]

62-13-206. Meetings. — (a) The commission may hold such meetings as it may deem necessary for the purpose of transacting such business as may properly come before it. All members of the commission shall be duly notified of the time and place of each meeting.

(b) A majority of the commission constitutes a quorum at any meeting of the commission. [Acts 1973, ch. 181, § 7(g); 1981, ch. 473, § 5; T.C.A., § 62-1314.]

62-13-207. Executive director — Director of education — Qualifications. — (a) The commission shall have an executive director, who shall have passed the broker's examination for the state of Tennessee. The commission shall set all other qualifications necessary for the position of executive director. The executive director shall be appointed by the commission, with the approval of the commissioner of personnel. The term of the executive director shall be four (4) years, and such executive director shall be eligible for reappointment. The commission shall also retain an administrator and such other staff members as the commission may deem necessary and proper. The commission shall fix the compensation to be paid to the executive director, the administrator and staff of the commission, subject to applicable rules, regulations and law.

(b) The commission shall have a full-time director of education. The director of education shall have a college degree from an accredited university. [Acts 1973, ch. 181, § 7(d); 1975, ch. 165, § 11; 1978, ch. 906, § 23; T.C.A., § 62-1315; Acts 1993, ch. 293, § 1; 1994, ch. 702, § 1.]

62-13-208. Real estate education and recovery account. — (a) There is hereby established within the general fund a real estate education and recovery account, hereinafter the "account." All funds received by the commission under this section shall be deposited into the account and held solely for the purposes of this section. The commission shall maintain a minimum balance of five hundred thousand dollars ($500,000) in the account.

(b) Moneys within the account shall be invested by the state treasurer in accordance with the provisions of § 9-4-603 for the sole benefit of the account.

(c)(1) When any individual applies for an original license as a broker, affiliate broker or time-share salesperson, the applicant shall pay, in addition to the original license fee, a fee in an amount established by the commission for deposit into the account. If the commission refuses to issue a license, this fee shall be returned to the applicant.

(2) In addition, the commission may assess each individual broker, affiliate broker and time-share salesperson, as a condition for renewal of the individual's license, a fee, in addition to the renewal fee, not to exceed thirty dollars ($30.00), for the purpose of ensuring that the required minimum balance is maintained in the account.

(d) Any person may, by order of any court having competent jurisdiction, recover from the account actual or compensatory damages, not including interest and costs, resulting from any violation of this chapter, or of any rule promulgated thereunder, committed by a broker, affiliate broker or time-share salesperson; provided, that:

(1) The liability of the account shall not exceed fifteen thousand dollars ($15,000) per transaction, regardless of the number of persons aggrieved or parcels of real estate involved in such transaction;

(2) The liability of the account for the acts of a broker, affiliate broker or time-share salesperson, when acting as such, shall be terminated upon the issuance of court orders authorizing payments from the account for judgments, or any unsatisfied portion of judgments, in an aggregate amount of thirty thousand dollars ($30,000) on behalf of such broker, affiliate broker or time-share salesperson;

(3) A broker, affiliate broker or time-share salesperson acting as an agent in a real estate transaction shall have no claim against the account; and

(4) A bonding company not acting as a principal in a real estate transaction shall have no claim against the account.

(e) When any aggrieved person commences action for a judgment which may result in collection from the account, such person shall promptly notify the commission to this effect in writing, by certified mail, return receipt requested. The commission may, subject to the approval of the attorney general and reporter, take any action it may deem appropriate to protect the integrity of the account.

(f) When any aggrieved person obtains a valid judgment respecting which recourse against the account is permitted under this section, upon termination of all proceedings including reviews and appeals in connection with the judgment, and all or any part of the judgment is unpaid after sixty (60) days, and such person has "exhausted all remedies at law" including, but not limited to, attachment, execution, levy and garnishment, to satisfy the judgment, such

person may apply to the court in which the judgment was entered for an order directing payment from the account of the amount unpaid upon the judgment. Upon determination of the court that the judgment or any part thereof is unpaid and all required attempts to secure satisfaction have been made, the court shall enter an order directing the commission to make payment from the account to satisfy such judgment.

(g) If the commission, pursuant to a court order, pays any amount from the account on behalf of a licensed broker, affiliate broker or time-share salesperson, the license of such broker, affiliate broker or time-share salesperson may, in the discretion of the commission, be suspended or revoked. No broker, affiliate broker or time-share salesperson whose license is revoked under this subsection shall be eligible to apply for a new license until that person has repaid in full the amount paid from the account on that person's behalf, plus interest at the effective earnings rate for the account for the period such claim is unpaid.

(h) When, upon the order of the court, the commission has paid from the account any sum to the judgment creditor, the commission shall be subrogated to all of the rights of the judgment creditor in the judgment. Any amount recovered by the commission on the judgment shall be deposited to the account. If the total amount collected on the judgment by the commission exceeds the amount paid from the account to the original judgment creditor plus interest and the cost of collection, the commission may elect to pay such coverage, or reassign the remaining interest in the judgment, to the original judgment creditor. The payment or reassignment to the original judgment creditor shall not subject the account to further liability for payment to the original judgment creditor based on that transaction or judgment. Any costs incurred by the commission in attempting to collect judgments shall be paid from the account.

(i) If, at any time, the money deposited in the account is insufficient to satisfy any duly authorized claim or portion thereof, the commission shall, when sufficient money has been deposited in the account, satisfy such unpaid claims or portions thereof in the order that they were originally filed, plus interest at the effective earnings rate for the account for the period such claim is unpaid.

(j) The failure of an aggrieved person to comply with all of the provisions of this section shall constitute a waiver of any rights hereunder.

(k) It is unlawful for any person to file or cause to be filed with the commission any notice, statement, or other document required under this section which is false, or contains any material misstatement of fact.

(*l*) The commission may, in its discretion, utilize any return on investment of the account to cover expenses incurred in the performance of functions authorized by §§ 62-13-107 and 62-13-108, or in the preparation and dissemination of information for the benefit of licensees; provided, that the commission shall not expend or commit sums for any such purpose in an amount which would reduce the account to a balance of less than five hundred thousand dollars ($500,000).

(m) No state funds shall be expended to effectuate the provisions of this section other than the fees and charges set forth in this section. [Acts 1973, ch. 181, § 11(b), (c); modified; Acts 1978, ch. 906, § 24; T.C.A., § 62-1322; Acts 1984, ch. 810, § 6; 1989, ch. 89, § 6; 1989, ch. 324, § 2; 1990, ch. 946, §§ 1-4.]

62-13-209. General counsel. — The commission shall have a full time general counsel. The general counsel shall be a graduate of an accredited law school and admitted to practice law in Tennessee. [Acts 1994, ch. 595, § 2.]

Part 3—Qualifications and Licensing

62-13-301. License requirement. — It is unlawful for any person, directly or indirectly, to engage in or conduct, or to advertise or claim to be engaging in or conducting the business, or acting in the capacity of a real estate broker, affiliate broker, time-share salesperson or acquisition agent, as defined in § 62-13-102, within this state, without first obtaining a license as such broker, affiliate broker, time-share salesperson or acquisition agent, as provided in this chapter, unless exempted from obtaining a license under § 62-13-104. [Acts 1973, ch. 181, § 2; 1981, ch. 473, § 2; T.C.A., § 62-1303; Acts 1989, ch. 89, § 7; 2002, ch. 812, § 2.]

Amendments. The 2002 amendment deleted "or" following "affiliate broker" and inserted "or acquisition agent," twice and made a minor punctuation change.

Effective Dates. Acts 2002, ch. 812, § 9. June 11, 2002.

Cross-References. Discriminatory housing practices, title 4, ch. 21, part 6.

License required for certain persons at auctions acting as brokers or affiliate brokers, § 62-19-102.

Real estate appraiser, ch. 39 of this title.

Textbooks. Tennessee Jurisprudence, 5 Tenn. Juris., Brokers, § 4; 7 Tenn. Juris., Contracts, § 117; 20 Tenn. Juris., Pleading, § 15; 25 Tenn. Juris., Waiver, § 5.

Law Reviews. Comment, An Overview of Time-Sharing and the Tennessee Time-Share Act: Are Purchasers Now Protected?, 53 Tenn. L. Rev. 779 (1986).

Cited: Smithwick v. Young, 623 S.W.2d 284 (Tenn. Ct. App. 1981).

NOTES TO DECISIONS

Analysis

1. Purpose.
2. Prosecutions for failure to obtain license.
3. License required.

1. Purpose.

The Tennessee Real Estate Broker License Act of 1973 is designed to protect the public from irresponsible or unscrupulous persons dealing in real estate. Business Brokerage Ctr. v. Dixon, 874 S.W.2d 1 (Tenn. 1994).

2. Prosecutions for Failure to Obtain License.

Indictment, which charged that defendant engaged in the business of a real estate salesman without first obtaining a license to do so, which did not allege how he engaged in such business or what he did in connection therewith, or for whom he worked, to whom or what he sold or the date or dates upon which he did one or more of such things was void for indefiniteness. McLemore v. State, 215 Tenn. 332, 385 S.W.2d 756 (1965).

3. License Required.

Salaried employees used to sell real estate for corporation engaged in the business of acquiring and selling real estate for its own account, were required to possess a real estate broker's license, despite that the employees were not paid on a commission basis in relation to the value of the corporate real estate sold by the representative. Bowden Bldg. Corp. v. Tennessee Real Estate Comm'n, 15 S.W.3d 434 (Tenn. Ct. App. 1999).

62-13-302. Employment by broker of unlicensed broker or broker in another state. — It is unlawful for any licensed broker to employ or compensate any person who is not a licensed broker or a licensed affiliate broker for performing any of the acts regulated by this chapter. A licensed broker may pay a commission to a licensed broker of another state if such

nonresident broker does not conduct in this state any of the negotiations for which a commission is paid. [Acts 1973, ch. 181, § 13(a); T.C.A., § 62-1306.]

Textbooks. Tennessee Jurisprudence, 7 Tenn. Juris., Contracts, § 117.

Cited: Bennett v. MV Investors, 799 S.W.2d 221 (Tenn. Ct. App. 1990).

NOTES TO DECISIONS

1. Sale of Business.

While a licensed broker could not employ unlicensed agents in conducting a real estate agency, a broker may hire a skilled professional to help put together a sale of a business. March Group, Inc. v. Bellar, 908 S.W.2d 956 (Tenn. Ct. App. 1995).

62-13-303. Qualifications — Prerequisites for licensing. — (a)(1) Licenses shall be granted only to persons who bear a good reputation for honesty, trustworthiness, integrity and competence to transact the business of broker, affiliate broker or time-share salesperson in such manner as to safeguard the interest of the public, and only after satisfactory proof of such qualifications has been presented to the commission. No license shall be denied any person because of race, color, religion, sex or national origin.

(2) All applicants for an affiliate real estate broker's license must provide adequate proof to the commission that they have a high school degree or a general educational development certificate.

(3)(A) All affiliate brokers must complete a Tennessee real estate commission-approved thirty (30) hours of education in specified areas including contract writing, handling consumer deposits, listing property, agency disclosures, or other areas designated by the commission, within six (6) months of obtaining their affiliate broker's license. Notwithstanding any other provision contained in this chapter, if the required thirty (30) hours of education are not obtained and proof of compliance thereof provided to the commission within the six (6) month period, the affiliate broker's license shall automatically expire at the end of the six (6) month period.

(B) Beginning January 1, 2005, the education requirements specified in this subsection (a), in addition to any other education requirements specified in this chapter to be completed by an applicant prior to licensure, shall be completed by an applicant for an affiliate broker's license prior to the original license being issued. This education requirement is in addition to any continuing education requirements specified in this chapter or the rules of the commission.

(b) Any person who desires an affiliate broker's license shall submit an application for examination to the commission on the prescribed form. The application shall be accompanied by:

(1) The fee specified in § 62-13-308; and

(2) Certification of satisfactory completion by the applicant of sixty (60) classroom hours in real estate at a school, college, or university approved by the commission, including thirty (30) classroom hours covering the basic principles of real estate.

(c) Any person who desires a broker's license shall submit an application for examination to the commission on the prescribed form. The application shall be accompanied by:

(1) The fee specified in § 62-13-308;

(2) Certification of satisfactory completion by the applicant of one hundred twenty (120) classroom hours in real estate (before or after receipt of an affiliate broker's license) at a school, college, or university approved by the commission, including thirty (30) classroom hours covering office or brokerage management; and

(3)(A) If the applicant was licensed as an affiliate broker after May 12, 1988, satisfactory proof that the applicant has held an active real estate license for at least thirty-six (36) months, or, if the applicant holds a baccalaureate degree with a major in real estate, for at least twenty-four (24) months; or

(B) If the applicant was licensed as an affiliate broker on or before May 12, 1988, satisfactory proof that the applicant has been engaged as a real estate licensee for at least twenty-four (24) months, or, if the applicant holds a baccalaureate degree with a major in real estate, for at least twelve (12) months.

(d) Each applicant who passes the examination shall submit an application for the appropriate license to the commission. If such application is not filed within six (6) months after the date of the examination passed, the applicant must retake and pass the examination in order to be eligible for a license.

(e) An application for an affiliate broker's license shall be accompanied by:

(1) The fee specified in § 62-13-308;

(2) Satisfactory proof that the applicant:

(A) Is at least eighteen (18) years of age; and

(B) Has been a resident of this state for at least forty-five (45) days; and

(3) A sworn statement by the broker with whom the applicant desires to be affiliated certifying that, in the broker's opinion, the applicant is honest and trustworthy, and that the broker will actively supervise and train the applicant during the period the license remains in effect.

(f) An application for a broker's license shall be accompanied by:

(1) The fee specified in § 62-13-308; and

(2) Satisfactory proof that the applicant:

(A) Is at least eighteen (18) years of age; and

(B) Has been a resident of this state for at least forty-five (45) days.

(g) Every two (2) years, as a requisite for the reissuance of an affiliate broker's license originally issued on or after July 1, 1980, the affiliate broker shall furnish certification of satisfactory completion of sixteen (16) classroom hours in real estate courses at any school, college, or university approved by the commission.

(h) Within a period of three (3) years from the date of issuance of an original broker's license, the licensee shall, as a requisite for the reissuance of the license, furnish certification of satisfactory completion of an additional one hundred twenty (120) classroom hours in real estate at any school, college or university approved by the commission. Beginning with the license period immediately following the license period in which the licensee completes the one hundred twenty (120) hours of education specified in this subsection (h), the licensee of a broker's license originally issued after January 1, 2005, every two (2) years shall furnish certification of satisfactory completion of sixteen (16) classroom hours in real estate courses at any school, college, or university approved by the commission as a requisite for the reissuance of the license.

(i) The commission shall, at least six (6) months prior to the deadline for furnishing the certification required by subsections (g) and (h), notify each licensee from whom such certification has not been received.

(j) Any person who desires a time-share salesperson license shall submit an application for examination and license to the commission on the prescribed form. The application shall be accompanied by:

(1) The fees specified in § 62-13-308 for examination and license;

(2) Satisfactory proof that the applicant is:

(A) At least eighteen (18) years of age; and

(B) A resident of this state;

(3) A sworn statement by the broker with whom the applicant desires to be affiliated certifying that, in the broker's opinion, the applicant is honest and trustworthy, and that the broker will actively supervise and train the applicant during the period the license remains in effect; and

(4) Certification, by the broker with whom the applicant desires to be affiliated, stating that the applicant has completed a thirty (30) hour training program consisting of instruction in the fundamentals of the Tennessee Time-Share Act, compiled in title 66, chapter 32, part 1, and related topics.

(k) Any person who desires an acquisition agent license shall submit an application for examination and license to the commission on the prescribed form.

(1) The application shall be accompanied by:

(A) The fees specified in § 62-13-308 for examination and license;

(B) Proof satisfactory to the commission that the applicant is at least eighteen (18) years of age; and

(C) Proof satisfactory to the commission that the applicant is of good moral character.

(2) Compliance by an acquisition agent with the licensing requirements of this section shall constitute compliance with the registration requirements contained in § 66-32-139. [Acts 1973, ch. 181, § 8(a)-(f); 1980, ch. 707, § 1; T.C.A., § 62-1316; Acts 1982, ch. 589, § 3; 1982, ch. 864, §§ 1-4; 1984, ch. 810, § 1; 1987, ch. 419, § 3; 1988, ch. 919, §§ 2, 3; 1989, ch. 89, §§ 8, 9; 1989, ch. 242, § 1; 1989, ch. 324, § 3; 1993, ch. 103, §§ 1, 2; 2002, ch. 812, § 5; 2003, ch. 233, § 1; 2003, ch. 234, § 1.]

Amendments. The 2002 amendment added (k).

The 2003 amendment by ch. 233, in (a)(3), redesignated the former first sentence as the present first sentence of (A), and redesignated the former second sentence as the present last sentence of (B); in (a)(3)(A), substituted "six (6) months" for "one (1) year" in the first sentence, and added the second sentence; and in (a)(3)(B), added the first sentence, and, in the last sentence, substituted "education requirement is" for "education shall be", added "any", and substituted "or the rules" for "and the rules".

The 2003 amendment by ch. 234 added the last sentence of (h).

Effective Dates. Acts 2002, ch. 812, § 9. June 11, 2002.

Acts 2003, ch. 233, § 2. June 2, 2003.

Acts 2003, ch. 234, § 2. June 2, 2003.

Section to Section References. This section is referred to in §§ 62-13-106, 62-13-318, 62-13-322.

Textbooks. Tennessee Jurisprudence, 5 Tenn. Juris., Brokers, § 4.

Cited: Tackett v. Mullins, 612 S.W.2d 909 (Tenn. 1981).

62-13-304. Written examinations. — (a)(1) In addition to submitting proof of honesty, trustworthiness, integrity and good reputation, each appli-

cant shall pass a written examination prepared by or under the supervision of the commission.

(2) The examination may be given orally at the discretion of the commission if a written examination is precluded by reason of physical handicap.

(3) The examination shall be given at such times and places within the state as the commission shall prescribe. Notwithstanding any provision of law to the contrary, the commission may administer the examination at requested locations, and may charge such special fees as the commission may deem appropriate.

(4) The examination for a license shall include business ethics, composition, arithmetic, elementary principles of land economics and appraisal, closing statements, a general knowledge of the statutes of this state relating to deeds, mortgages, trust deeds, contracts of sale, leases and other related matters, and the provisions of this chapter.

(5) The examination for a broker's license shall be of more exacting nature and scope than the examination for an affiliate broker's license.

(6) An applicant failing to pass an examination may be reexamined under such rules as the commission may prescribe.

(7)(A) The examination for time-share salesperson license shall include the fundamentals of the time-share business, Tennessee Time-Share Act, compiled in title 66, chapter 32, and other related topics including the parts of the Real Estate Broker Act relative to time-share salespersons.

(B) The minimum passing grade for the time-share salesperson examination shall be seventy percent (70%).

(C) An application for the time-share salesperson license examination must be received by the commission at least ten (10) days before the examination date on which the applicant wishes to be examined.

(D) [Deleted by 2002 amendment.]

(8)(A) The examination for an acquisition agent license shall be the same as the examination administered for a time-share salesperson license.

(B) The minimum passing grade for an acquisition agent license examination shall be seventy percent (70%).

(C) An application for the acquisition agent license examination must be received by the commission at least ten (10) days before the examination date on which the applicant wishes to be examined.

(b) No applicant shall engage in the real estate business as a broker, affiliate broker, time-share salesperson or acquisition agent until satisfactorily passing the examination and complying with other requirements of this chapter and until a license has been issued to the applicant. [Acts 1973, ch. 181, § 9(a), (b); T.C.A., § 67-1317(a), (b); Acts 1989, ch. 89, §§ 10-12; 2002, ch. 812, §§ 6, 7.]

Amendments. The 2002 amendment in (a), deleted (7)(D) which read: "Temporary time-share salesperson licenses, valid for thirty (30) days, will be made available within five (5) days after the administration of the examination for all applicants receiving a minimum passing grade and having satisfied all other requirements.", and added (8); and, deleted "or" preceding "time-share salesperson" and inserted "or acquisition agent" and made a minor punctuation change in (b).

Effective Dates. Acts 2002, ch. 812, § 9. June 11, 2002.

62-13-305, 62-13-306. [Repealed.]

Compiler's Notes. Former §§ 62-13-305, 62-13-306 (Acts 1973, ch. 181, § 9; 1980, ch. 870, § 4; 1981, ch. 473, § 7; 1982, ch. 864, § 6), concerning issuance of licenses and bonds of brokers, were repealed by Acts 1982, ch. 864, § 5 and Acts 1984, ch. 810, § 7. For provisions concerning expiration and renewal of licenses see § 62-13-307. Acts 1984, ch. 810, § 6 established the real estate education and recovery fund.

62-13-307. Expiration and renewal of licenses — Penalty. — (a) Notwithstanding any other provisions of law to the contrary, all licenses issued under this chapter shall expire on December 31 of each even-numbered year. All documentation and fees which are a prerequisite to the renewal of a license or registration shall be delivered to the commission no later than sixty (60) days prior to the expiration date of the license.

(b) The license of any broker, affiliate broker, time-share salesperson or acquisition agent who fails to deliver all documentation or to pay fees that are a prerequisite to the renewal of a license or registration no later than sixty (60) days prior to the expiration date of the license shall not be renewed except upon providing such documentation prior to the expiration date of the license and payment of the fees, plus a penalty fee of not more than fifty dollars ($50.00) per month, or portion thereof, that the documentation or fees are late. [Acts 1973, ch. 181, § 12(f); 1979, ch. 148, § 1; 1981, ch. 473, § 8; T.C.A., 62-1320; Acts 1982, ch. 864, §§ 7, 18; 1984, ch. 810, § 2; 1988, ch. 919, § 4; 1989, ch. 89, § 13; 1989, ch. 360, § 7; 1990, ch. 1026, § 40; 2000, ch. 861, § 2; 2003, ch. 97, § 1.]

Amendments. The 2000 amendment rewrote this section which read: "All broker and affiliate broker licenses shall expire on December 31 of each even-numbered year, and shall be invalid on that date unless renewed. Such licenses may be renewed on or before the expiration date by remitting to the commission the fee as set by the commission."

The 2003 amendment added (b).

Effective Dates. Acts 2000, ch. 861, § 5. May 31, 2000.

Acts 2003, ch. 97, § 3. May 7, 2003.

Cross-References. Director of division of regulatory boards to promulgate rules concerning certain license renewal dates, § 56-1-302.

NOTES TO DECISIONS

1. Commission Unauthorized to Change Requirements.

The real estate commission could not nullify the express statutory requirement that a certificate of license be recorded in the office of the county clerk prior to engaging in real estate activities. Tackett v. Mullins, 612 S.W.2d 909 (Tenn. 1981).

62-13-308. Examination and license fees. — The commission shall prescribe in its rules and regulations all fees to be paid before any examinations shall be given or licenses issued by the commission as provided in this chapter. [Acts 1973, ch. 181, § 11(a); 1980, ch. 870, § 5; 1981, ch. 473, § 9; T.C.A., § 62-1321; Acts 1984, ch. 810, § 3; 1989, ch. 89, §§ 14-16; 1989, ch. 523, § 148.]

Cross-References. Real estate education and recovery account, § 62-13-208.

Section to Section References. This section is referred to in §§ 62-13-303, 62-13-309, 62-13-310.

NOTES TO DECISIONS

DECISIONS UNDER PRIOR LAW

1. Renewal.
Renewal under the former law was a matter of course upon payment of the required fee without reexamination or requalification in absence of complaints, such renewal having been largely administrative. Tennessee Real Estate Comm'n v. Godwin, 53 Tenn. App. 58, 378 S.W.2d 439 (1963).

62-13-309. Business locations — Display of license — Signs. — (a)(1)(A) Each office shall have a real estate firm license, a principal broker, and a fixed location with adequate facilities for affiliated licensees, located to conform with zoning laws and ordinances.

(B) Each branch location shall comply with the requirements of subdivision (a)(1)(A).

(2) The license of a broker and of each affiliate broker under contract to such broker shall be prominently displayed in the broker's principal place of business.

(3) Within ten (10) days after any change of location of such office, all licensees registered at that office shall notify the commission in writing of their new business address, and shall pay the fee established in § 62-13-308.

(b)(1) Each licensed broker shall maintain a sign on the outside of the broker's office of such size and content as local ordinances and the commission shall prescribe, which shall clearly state that the broker is engaged in the real estate business.

(2) In making application for a license or for a change of location, the licensee shall verify, in writing, that the licensee's office conforms with zoning laws and ordinances.

(3) The maintenance of the broker's office in the broker's home shall not relieve the broker from the requirement of having a sign outside of such house as required herein.

(4) Affiliate brokers are not required to display signs at the office of their brokers.

(c) The requirements of subsections (a) and (b) may be waived in cases of certain unusual geographical circumstances.

(d)(1) If the applicant for a broker's license maintains more than one (1) place of business within the state, the applicant shall apply for and obtain an additional firm license for each such branch office;

(2) Every such application shall state the location of such branch office and the name of the person in charge of it; and

(3) Each branch office shall be under the direction and supervision of a broker licensed at that address.

(e) No more than one (1) license shall be issued to any broker or affiliate broker to be in effect at one (1) time.

(f) Upon original application for a firm license and each renewal thereof, the firm shall provide proof of the establishment of the firm's escrow account satisfactory to the commission. [Acts 1973, ch. 181, § 12(a), (b), (d); T.C.A., § 62-1323; Acts 1982, ch. 864, § 16; 1988, ch. 919, §§ 5, 6; 1989, ch. 324, §§ 4, 5.]

Cross-References. Levy of occupation tax on principal brokers, § 67-4-1708.

Section to Section References. This section is referred to in § 67-4-1708.

62-13-310. Affiliate broker relationship to broker. — (a) Whenever the contractual relationship between a broker and affiliate broker is terminated, the present broker shall immediately sign and date the change of affiliation form prescribed by the commission. The affiliate broker may act under a contract with another broker upon completion and transmittal to the commission of such form, accompanied by the fee established pursuant to § 62-13-308. Such affiliate broker shall assure that the completed form and fee are promptly transmitted, and that the affiliate broker's license is prominently displayed in the new broker's principal place of business.

(b) Licensees may not post signs on any property advertising themselves as real estate agents unless the firm's name appears thereon in letters the same size or larger than those spelling out the name of the licensee.

(c) Any unlawful act or violation of any of the provisions of this chapter by any affiliate broker may not be cause for the suspension or revocation of the license of the broker with whom the affiliate broker is affiliated. [Acts 1973, ch. 181, §§ 12(c), (e), 16(b); 1981, ch. 473, §§ 10, 11; T.C.A., § 62-1324; Acts 1982, ch. 864, § 8; 1990, ch. 946, § 5.]

62-13-311. Revocation of license by court — Reinstatement. — Whenever any person, partnership, association, company, firm or corporation claiming to have been injured or damaged by the gross negligence, incompetency, fraud, dishonesty or misconduct on the part of any licensee following the calling or engaging in the business herein described, files suit upon such claim against such licensee in any court of record in this state and recovers judgment thereon, such court may as part of its judgment or decree in such cases, if it deem it a proper case in which so to do, revoke the certificate of license granted hereunder, and such certificate of license shall not be reissued to such licensee except upon the consenting vote of six (6) of the members of the commission in favor of such reissuance. [Acts 1973, ch. 181, § 15; T.C.A., § 62-1325; Acts 1982, ch. 864, § 9.]

Cross-References. Discriminatory housing practices, title 4, ch. 21, part 6.

Textbooks. Tennessee Jurisprudence, 5 Tenn. Juris., Brokers, § 6.

62-13-312. Discipline — Refusal, revocation or suspension of license — Downgrading of licenses — Automatic revocation. — (a) The commission may, upon its own motion, and shall, upon the verified complaint in writing of any person setting forth a cause of action under this section, ascertain the facts and, if warranted, hold a hearing for reprimand, or for the suspension or revocation of a license.

(b) The commission shall have power to refuse a license for cause or to suspend or revoke a license where it has been obtained by false representation, or by fraudulent act or conduct, or where a licensee, in performing or attempting to perform any of the acts mentioned herein, is found guilty of:

(1) Making any substantial and willful misrepresentation;

(2) Making any promise of a character likely to influence, persuade or induce any person to enter into any contract or agreement when the licensee could not or did not intend to keep such promise;

(3) Pursuing a continued and flagrant course of misrepresentation or making of false promises through affiliate brokers, other persons, or any medium of advertising, or otherwise;

(4) Misleading or untruthful advertising, including use of the term "Realtor" by a person not authorized to do so, or using any other trade name or insignia or membership in any real estate association or organization, of which the licensee is not a member;

(5) Failing, within a reasonable time, to account for or to remit any moneys coming into the licensee's possession which belong to others;

(6) Failing to preserve for three (3) years following its consummation records relating to any real estate transaction;

(7) Acting for more than one (1) party in a transaction without the knowledge and consent in writing of all parties for whom the licensee acts;

(8) Failing to furnish a copy of any listing, sale, lease, or other contract relevant to a real estate transaction to all signatories thereof at the time of execution;

(9) Using or promoting the use of any real estate listing agreement form, real estate sales contract form, or offer to purchase real estate form which fails to specify a definite termination date;

(10) Inducing any party to a contract, sale or lease to break such contract for the purpose of substitution in lieu thereof a new contract, where such substitution is malicious or is motivated by the personal gain of the licensee;

(11) Accepting a commission or any valuable consideration by an affiliate broker for the performance of any acts specified in this chapter, from any person, except the licensed real estate broker with whom the licensee is affiliated;

(12) Being convicted in a court of competent jurisdiction of this or any other state, or federal court, of forgery, embezzlement, obtaining money under false pretenses, bribery, larceny, extortion, conspiracy to defraud, or any crime or any similar offense or offenses, or pleading guilty or nolo contendere to any such offense or offenses;

(13) Violating any federal, state, or municipal law prohibiting discrimination in the sale or rental of real estate because of race, color, religion, sex or national origin;

(14) Violating any provision of this chapter, any rule duly promulgated and adopted thereunder, or the terms of any lawful order entered by the commission;

(15) In the case of a licensee, failing to exercise adequate supervision over the activities of any licensed affiliate brokers within the scope of this chapter;

(16) In the case of a licensee, failing within a reasonable time to complete such administrative measures as may be required by the commission upon the transfer or termination of any affiliate broker employed by the broker;

(17) Paying or accepting, giving or charging any undisclosed commission, rebate, compensation or profit or expenditures for a principal, or in violation of this chapter;

(18) Failing to disclose to an owner the licensee's intention or true position if the licensee, directly or indirectly through a third party, purchases for itself or acquires or intends to acquire any interest in or any option to purchase property which has been listed with the licensee's office to sell or lease;

(19) Engaging in the unauthorized practice of law;

(20) Any conduct, whether of the same or a different character from that hereinbefore specified, which constitutes improper, fraudulent or dishonest dealing; or

(21) Violating any provision of the Tennessee Time-Share Act, compiled in title 66, chapter 32, part 1, or any rule duly promulgated thereunder.

(c) The commission may, in addition to or in lieu of any other lawful disciplinary action against a broker pursuant to this section, order that such broker be downgraded to "affiliate broker" status.

(d) The director of the division of regulatory boards or the director's duly authorized representatives may, at all reasonable hours, examine and copy such books, accounts, documents, or records as are relevant to a determination of whether a licensee has properly maintained and disbursed funds from escrow or trustee accounts required hereunder. In case of refusal to permit the access accorded by this subsection, the director or the director's authorized representatives may pursue the remedies provided by § 4-5-311(b) for disobedience to any lawful agency requirement for information. Such refusal shall also constitute grounds for the commission to suspend or revoke a license.

(e) The sole purpose of this section is to provide guidelines for disciplinary actions taken by the Tennessee real estate commission against licensees found guilty of the violations listed herein.

(f) Whenever any licensee pleads guilty or is convicted of any offense enumerated in this chapter, the licensee must within sixty (60) days notify the commission of that conviction and provide the commission with certified copies of the conviction. The licensee's license shall automatically be revoked sixty (60) days after the licensee's conviction unless the licensee makes a written request to the commission for a hearing during that sixty-day period. Following any such hearing held pursuant to this section, the commission in its discretion may impose upon that licensee any sanction permitted by this chapter.

(g) Whenever the commission revokes or suspends the license of a salesperson, an affiliate broker, or a broker, then any school or instructor approval which the licensee holds shall also be revoked. Whenever a licensee surrenders a real estate license, any school or instructor approval which such licensee holds shall also be revoked. [Acts 1973, ch. 181, § 14; 1981, ch. 372, § 33; 1981, ch. 473, § 12; T.C.A., § 62-1326; Acts 1984, ch. 810, § 4; 1986, ch. 893, § 1; 1988, ch. 919, §§ 7-9; 1990, ch. 946, §§ 6, 7; 1994, ch. 595, § 1.]

Cross-References. Discriminatory housing practices, title 4, ch. 21, part 6.

Section to Section References. This section is referred to in §§ 62-13-313, 66-32-139.

Textbooks. Tennessee Jurisprudence, 5 Tenn. Juris., Brokers, § 6.

Law Reviews. The Tennessee Law of Real Estate Broker Licensing (Lewis L. Laska), 4 Memphis State U. L. Rev. 457.

Cited: State Bd. of Exmrs. for Architects & Eng'rs v. Weinstein, 638 S.W.2d 406 (Tenn. Ct. App. 1982); Award Realty, Inc. v. Copeland, 698 S.W.2d 337 (Tenn. 1985); Prowell v. Parks, 767 S.W.2d 633 (Tenn. 1989); United States v. Sharp, 12 F.3d 605 (6th Cir. 1993).

NOTES TO DECISIONS

ANALYSIS

1. Fraudulent dealings.
2. Willful misrepresentation.
3. Oral listing agreements.

1. Fraudulent Dealings.

Commission could have revoked license of broker for fraudulent dealings unrelated to real estate transactions. Tennessee Real Estate Comm'n v. Godwin, 53 Tenn. App. 58, 378 S.W.2d 439 (1963).

2. Willful Misrepresentation.

Where evidence showed that real estate broker while acting as agent between seller and prospective buyer and who held check for $1,000 as deposit on the contract already negotiated, promoted a sale of same property to another purchaser and told first purchaser that property had been sold by another agent, he acted improperly and unfairly and willfully misrepresented material facts. Porter v. Tennessee Real Estate Comm'n, 38 Tenn. App. 208, 271 S.W.2d 21 (1954).

3. Oral Listing Agreements.

The guideline set forth in (b)(9) is merely intended to prevent a real estate agent from obtaining a perpetual interest in the property of his principal and does not prohibit an oral listing agreement. Parks v. Morris, 914 S.W.2d 545 (Tenn. Ct. App. 1995).

62-13-313. Notice — Hearing. — (a)(1) Before refusing to issue a license or suspending or revoking an existing license upon the verified written complaint of any person setting out a cause of action under § 62-13-312, the commission shall, in writing, notify the accused applicant or licensee of its receipt of the complaint, enclosing a copy thereof.

(2) The accused applicant or licensee shall, within ten (10) days, file with the commission the applicant's or licensee's answer to the complaint, a copy of which shall be transmitted to the complainant.

(3) If, after investigation, the commission determines that the matter should have a hearing, a time and place therefor shall be set.

(b) All notices and answers required or authorized to be made or filed under this section may be served or filed personally, or by registered mail, to the last known business address of the addressee. If served personally, the time shall run from the date of service and if by registered mail, from the postmarked date of the letter enclosing the document.

(c) The affirmative vote of a majority of the commission shall be necessary to revoke or suspend a license.

(d) In the event the matter contained in the complaint shall have been filed or made a part of a case pending in any court in this state, the commission may then withhold its decision until the court action has been concluded. [Acts 1973, ch. 181, § 16(a); 1980, ch. 451, § 4; T.C.A., § 62-1327.]

Cross-References. Certified mail instead of registered mail, § 1-3-111.

Textbooks. Tennessee Jurisprudence, 5 Tenn. Juris., Brokers, § 6.

Law Reviews. The Tennessee Uniform Administrative Procedures Act: Procedure Before Hearing (Stephen L. Shields), 6 Mem. St. U.L. Rev. 201.

62-13-314. Reciprocity — Service of process on nonresidents. — (a)(1) A nonresident of this state who is a licensed broker, affiliate broker or time-share salesperson or equivalent real estate licensee in another state may apply for a license as a broker or affiliate broker in this state by submitting appropriate application to the commission.

(2) Such nonresident applicant need not maintain a place of business within this state; provided, that the applicant is regularly engaged in the real estate business and maintains a place of business in the other state.

(3) The commission may issue the appropriate license to such nonresident applicant if:

(A) The applicant has qualified for the license held in the applicant's state of residence by written examination;

(B) The applicant meets or exceeds each of the qualifications for licensure in this state;

(C) The applicant certifies that the applicant has read the provisions of this chapter and the rules and regulations promulgated thereunder; and

(D) The applicant's state of residence permits the issuance of licenses without written examination to brokers, affiliate brokers and time share salespersons resident in and licensed by this state.

(4) The commission may, in its discretion, refuse to issue, renew, or reinstate a broker's, affiliate broker's or time share salesperson's license if the applicant for, or holder of, such license is not a resident of this state.

(b)(1) Every nonresident applicant shall file an irrevocable consent that legal actions may be commenced against the nonresident applicant in the proper court of any county of this state in which a cause of action may arise, or in which the plaintiff may reside, by service of process or pleading authorized by the laws of this state, or by any member of the commission or the director thereof, the consent stipulating that the service of process or pleading shall be taken in all courts to be valid and binding as if personal service had been made upon the nonresident licensee in this state.

(2) The consent shall be duly acknowledged, and if made by a corporation, shall be authenticated by its seal.

(3) Any service of process or pleading shall be served on the executive director of the commission by filing duplicate copies, one (1) of which shall be filed in the office of the commission and the other forwarded by registered mail to the last known principal address of the nonresident licensee against whom such process or pleading is directed, and no default in any such action shall be taken except upon affidavit certification of the commission or the director thereof, that a copy of the process or pleading was mailed to the defendant as herein provided, and no default judgment shall be taken in any such action or proceeding until thirty (30) days after the day of mailing of process or pleading to the defendant.

(c) Notwithstanding any provision of law to the contrary, the Tennessee real estate commission has the authority to enter into reciprocity agreements with another state, if in the judgment of the commission such state has meaningful requirements for licensure. The reciprocity agreement may authorize the licensure of Tennessee licensees in such state and for the licensure of licensees of such state in Tennessee. [Acts 1973, ch. 181, § 13(b), (c); 1977, ch. 206, §§ 1, 2; 1980, ch. 870, § 6; 1981, ch. 473, §§ 13, 14; T.C.A., § 62-1330; Acts 1988, ch. 919, § 10; 1989, ch. 89, §§ 17-19; 1997, ch. 36, § 1.]

Cross-References. Certified mail instead of registered mail, § 1-3-111.

62-13-315. [Repealed.]

Compiler's Notes. Former § 62-13-315 (Acts 1981, ch. 473, § 6; T.C.A., § 62-1317(c)), concerning former residents, was repealed by Acts 1982, ch. 864, § 15. For current law, see § 62-13-318(c).

62-13-316. Register of applicants required. — (a) The commission shall keep a register of all applicants for license, showing for each the date of application, name, place of business, place of residence, and whether the license was granted or refused.

(b) The register shall be prima facie evidence of all matters recorded therein. [Acts 1973, ch. 181, § 19(a); T.C.A., § 62-1335.]

Law Reviews. The Tennessee Law of Real Estate Broker Licensing (Lewis L. Laska), 4 Memphis State U. L. Rev. 457.

62-13-317. Directory of licensed brokers and affiliate brokers. — (a) The commission may, from time to time, at its discretion, publish a directory of all brokers and affiliate brokers licensed by the commission. The directory shall contain such other data as the commission may determine to be in the interest of the public.

(b) Such directory shall be mailed to, and placed on file in, the office of the county clerk of each county. [Acts 1973, ch. 181, § 19(b); impl. am. Acts 1978, ch. 754, § 8; Acts 1980, ch. 707, § 2; T.C.A., § 62-1336; Acts 1982, ch. 864, § 10.]

62-13-318. Temporary retirement — Inactive status. — (a)(1) Upon written request accompanied by the license and the fee for change of status, any real estate firm, real estate broker or affiliate broker may temporarily retire the license.

(2) Temporary retirement will not be permitted unless all educational requirements specified in § 62-13-303 have been completed.

(3) If the retiree wishes to remain in retirement for any portion of a subsequent license renewal period, the retiree shall pay the required license renewal fee prior to the license expiration date.

(4) No retired licensee may engage in any act defined in § 62-13-102.

(5) The retiree is responsible for advising the commission of the retiree's current mailing address.

(b)(1) Upon written request accompanied by the broker's or affiliate broker's license, the proper form and the change of status fee, any real estate broker or affiliate broker who is ineligible for temporary retirement may be placed in "inactive" status.

(2) An inactive broker or affiliate broker shall remain subject to the educational requirements of § 62-13-303.

(3) If the inactive licensee wishes to remain inactive for any portion of a subsequent license renewal period, the licensee shall pay the required license renewal fee prior to the license expiration date.

(4) No inactive licensee may engage in any act defined in § 62-13-102.

(5) Upon receipt of proof of completion of continuing education sufficient to meet the licensee's current requirements, the status of the licensee will be automatically changed from inactive to retirement.

(c) A licensee wishing to reactivate a license from an inactive or retirement status shall submit the proper form and pay the fee for a change of status. [Acts 1975, ch. 148, §§ 1-3; 1980, ch. 707, § 3; 1981, ch. 473, §§ 16, 17; T.C.A., §§ 62-1340 — 62-1342; Acts 1982, ch. 864, § 13; 1984, ch. 810, §§ 8-10; 1988, ch. 919, § 11; 1990, ch. 946, § 8.]

Section to Section References. This section is referred to in § 62-13-322.

62-13-319. Reinstatement after failure to pay renewal or retirement fee. — (a) The license of any broker, affiliate broker, time-share salesperson or acquisition agent who fails timely to pay a renewal or retirement fee or to comply with any prerequisite or condition to licensure or renewal may be reinstated without examination within sixty (60) days after the expiration date of the license upon providing proof of compliance with such prerequisites or conditions, including payment of any penalty fee arising from such failure to comply with any prerequisite or condition to renewal prior to the expiration date of the license, and payment of the renewal fee, plus an additional penalty fee of not more than one hundred dollars ($100) per month. Any person desiring reinstatement thereafter must reapply for licensure; provided, however, that the commission may, in its discretion:

(1) Waive reexamination or additional education requirements for such an applicant; or

(2) Reinstate a license subject to the applicant's compliance with such reasonable conditions as the commission may prescribe, including payment of a penalty fee, in addition to the penalty fee provided in subsection (a), of not more than one hundred dollars ($100) per month, or portion thereof, from the time the license expired.

(b) When fees are remitted by mail to the commission, the date of payment shall be determined by the official postmark on such mail. [Acts 1982, ch. 864, § 14; 1989, ch. 89, § 20; 2002, ch. 812, § 8; 2003, ch. 97, § 2.]

Amendments. The 2002 amendment deleted "or" preceding "time-share salesperson" and inserted "or acquisition agent" in (a).

The 2003 amendment rewrote the introductory paragraph of (a), which read: "Any broker, affiliate broker, time-share salesperson or acquisition agent who fails timely to pay a renewal or retirement fee may be reinstated without examination upon payment of the appropriate fee, plus a penalty fee of twenty-five dollars ($25.00), within sixty (60) days after the deadline. Any person desiring reinstatement thereafter must reapply for licensure; provided, that the commission may, in its discretion:", and substituted "a penalty fee, in addition to the penalty fee provided in subsection (a), of not more than one hundred dollars ($100) per month, or portion thereof, from the time the license expired" for "an additional fee not to exceed twenty-five dollars ($25.00)" in (a)(2).

Effective Dates. Acts 2002, ch. 812, § 9. June 11, 2002.

Acts 2003, ch. 97, § 3. May 7, 2003.

Section to Section References. This section is referred to in § 62-13-322.

62-13-320. Surrender of broker's for affiliate broker's license. — The holder of a valid broker's license shall, upon the holder's written request, be

entitled to surrender such license to the commission in exchange for an affiliate broker's license. [Acts 1984, ch. 810, § 5.]

62-13-321. Escrow or trustee account of deposited funds. — Every broker shall, in accordance with rules promulgated by the commission under § 62-13-203, keep an escrow or trustee account of funds deposited with the broker relating to a real estate transaction. The broker shall maintain for a period of at least (3) years accurate records of such account showing:

(1) The depositor of the funds;

(2) The date of deposit;

(3) The date of withdrawal;

(4) The payee of the funds; and

(5) Such other pertinent information as the commission may require. [Acts 1988, ch. 919, § 1.]

Section to Section References. This section is referred to in § 62-13-323.

62-13-322. Retired or inactive — Reactivation of license. — (a) Notwithstanding any other provision of this chapter or rule or regulation to the contrary, any provision of law or rule or regulation which has the effect of prohibiting reinstatement or reactivation of a license upon the payment of the applicable fees and penalties shall not apply to any person who has retired such person's license or who has been placed in "inactive" status if the following conditions are applicable:

(1) Such person's license was revoked, suspended or downgraded while the license was retired or in inactive status merely because the educational requirements of § 62-13-303 were not completed within the required time;

(2) Such educational requirements were completed within two (2) years from the date the license was retired or placed in inactive status and all additional educational requirements, if any, have been met; and

(3) The reinstatement fees and penalties specified in §§ 62-13-318 and 62-13-319 are paid.

(b) If all of the above conditions are met, the license of such person shall be reactivated. [Acts 1988, ch. 1031, § 2.]

62-13-323. Escrow account — Waiver. — (a) The principal broker of a real estate firm that does not engage in activities that require the acceptance of any funds belonging to others may receive from the Tennessee real estate commission a waiver from the provisions of § 62-13-321.

(b) Upon receipt of a waiver by the Tennessee real estate commission pursuant to subsection (a), a principal broker may close the real estate firm's escrow account.

(c) The principal broker of a real estate firm authorized pursuant to this section to operate without an escrow account may accept funds belonging to others subject to the following:

(1) The principal broker shall open an escrow account within one (1) business day of accepting such deposit, and deposit such funds into the newly opened escrow account on the same day; and

(2) The principal broker shall notify the Tennessee real estate commission within one (1) business day after opening a new escrow account and shall provide the following information:

(A) The name and address of the bank where the new escrow account was opened;

(B) The name of the new escrow account; and

(C) The account identification number of the new escrow account.

(d) A principal broker who opens an escrow account pursuant to subsection (c) shall acknowledge responsibility to operate under all the requirements of § 62-13-321.

(e) No principal broker may obtain a waiver pursuant to subsection (a) for the same real estate firm more than once each license renewal period. [Acts 2002, ch. 553, § 1.]

Effective Dates. Acts 2002, ch. 553 § 2. April 3, 2002.

Part 4—Representation by Real Estate Agents

62-13-401. Creation. — A real estate licensee may provide real estate services to any party in a prospective transaction, with or without an agency relationship to one (1) or more parties to the transaction. Until such time as a licensee enters into a specific written agreement to establish an agency relationship with one (1) or more parties to a transaction, such licensee shall be considered a facilitator and shall not be considered an agent or advocate of any party to the transaction. An agency or subagency relationship shall not be assumed, implied or created without a written bilateral agreement that establishes the terms and conditions of such agency or subagency relationship. [Acts 1995, ch. 246, § 3; 1996, ch. 772, § 4.]

Cited: Coldwell Banker v. KRA Holdings, 42 S.W.3d 868 (Tenn. Ct. App. 2000).

62-13-402. Limited agency. — (a) If a real estate licensee is engaged as an agent, such real estate licensee serves as a limited agent retained to provide real estate services to a client. Such licensee shall function as an intermediary in negotiations between the parties to a transaction unless such parties negotiate directly.

(b) A real estate licensee shall owe all parties to a transaction the duties enumerated in § 62-13-403. A licensee shall owe to such licensee's client the duties enumerated in § 62-13-404.

(c) Notwithstanding any provision of law to the contrary, the duties enumerated in §§ 62-13-403 and 62-13-404 shall supersede any fiduciary or common law duties owed by a licensee to such licensee's client on January 1, 1996. [Acts 1995, ch. 246, § 4.]

Section to Section References. This section is referred to in § 62-13-404.

62-13-403. Duty owed to all parties. — A licensee who provides real estate services in a real estate transaction shall owe all parties to such transaction the following duties, except as provided otherwise by § 62-13-405, in addition to other duties specifically set forth in this chapter or the rules of the commission:

(1) Diligently exercise reasonable skill and care in providing services to all parties to the transaction;

(2) Disclose to each party to the transaction any adverse facts of which licensee has actual notice or knowledge;

(3) Maintain for each party to a transaction the confidentiality of any information obtained by a licensee prior to disclosure to all parties of a written agency or subagency agreement entered into by the licensee to represent either or both of the parties in a transaction. This duty of confidentiality extends to any information which the party would reasonably expect to be held in confidence, except for information which the party has authorized for disclosure, information required to be disclosed under this part, and information otherwise required to be disclosed pursuant to this chapter. This duty survives both the subsequent establishment of an agency relationship and the closing of the transaction;

(4) Provide services to each party to the transaction with honesty and good faith;

(5) Disclose to each party to the transaction timely and accurate information regarding market conditions that might affect such transaction only when such information is available through public records and when such information is requested by a party.

(6) Timely account for trust fund deposits and all other property received from any party to the transaction; and

(7)(A) Not engage in self-dealing nor act on behalf of licensee's immediate family, or on behalf of any other individual, organization or business entity in which the licensee has a personal interest without prior disclosure of such interest and the timely written consent of all parties to the transaction; and

(B) Not recommend to any party to the transaction the use of services of another individual, organization or business entity in which the licensee has an interest or from whom the licensee may receive a referral fee or other compensation for the referral, other than referrals to other licensees to provide real estate services under the Tennessee Real Estate Broker License Act of 1973, without timely disclosing to the party who receives the referral, the licensee's interest in such referral or the fact that a referral fee may be received. [Acts 1995, ch. 246, § 5; 1996, ch. 772, §§ 5, 6.]

Section to Section References. This section is referred to in §§ 62-13-405, 66-5-108.

Law Reviews. 1996 Real Estate Legislation: What You Don't Know *Can* Hurt You (William R. Bruce), 32 No. 6 Tenn. B.J. 12 (1996).

62-13-404. Duty owed to licensee's client. — Any licensee who acts as an agent in a transaction regulated by the Tennessee Real Estate Broker License Act of 1973 owes to such licensee's client in that transaction the following duties, to:

(1) Obey all lawful instructions of the client when such instructions are within the scope of the agency agreement between licensee and licensee's client; and

(2) Be loyal to the interests of the client. A licensee must place the interests of the client before all others in negotiation of a transaction and in other activities, except where such loyalty duty would violate licensee's duties to a customer under § 62-13-402 or a licensee's duties to another client in a dual agency. [Acts 1995, ch. 246, § 6; 1996, ch. 772, § 7.]

Compiler's Notes. The Tennessee Real Estate Broker license Act of 1973, referred to in this section, is compiled in this chapter.

Section to Section References. This section is referred to in §§ 62-13-402, 63-13-405.

62-13-405. Written disclosure. — (a) If a licensee personally assists a prospective buyer or seller in the purchase or sale of a property, and such buyer or seller is not represented by this or any other licensee, the licensee shall verbally disclose to such buyer or seller the licensee's facilitator, agent, subagent or designated agent status in the transaction before any real estate services are provided. Known adverse facts about a property must also be disclosed under the Tennessee Residential Property Disclosure Act, title 66, chapter 5, part 2, but licensees shall not be obligated to discover or disclose latent defects in a property or to advise on matters outside the scope of their real estate license.

(b) The disclosure of agency status pursuant to subsection (a) must be confirmed in writing with an unrepresented buyer prior to the preparation of an offer to purchase. The above disclosure of agency status must be confirmed in writing with an unrepresented seller prior to execution of a listing agreement or presentation of an offer to purchase, whichever comes first. Following delivery of the written disclosure, the licensee shall obtain a signed receipt for such disclosure from the party to whom it was provided.

(c) The disclosure of agency or facilitator status, as provided in subdivision (a), shall not be construed as, or be considered a substitute for, a written agreement to establish an agency relationship between the broker and a party to a transaction as referenced in § 62-13-406.

(d) Upon initial contact with any other licensee involved in the same prospective transaction, the licensee shall immediately disclose such licensee's role in the transaction, including any agency relationship, to this other licensee. If the licensee's role changes at any subsequent date, such licensee shall immediately notify any other licensees and any parties to the transaction relative to such change in status.

(e) Real estate transactions involving the transfer or lease of commercial properties, the transfer of property by public auction, the transfer of residential properties of more than four (4) units, or the lease or rental of residential properties shall not be subject to the disclosure requirements of §§ 62-13-403, 62-13-404 and this section. [Acts 1995, ch. 246, § 7; 1996, ch. 772, §§ 8-11.]

Section to Section References. This section is referred to in §§ 62-13-403, 66-5-208.

Law Reviews. 1996 Real Estate Legislation: What You Don't Know *Can* Hurt You (William R. Bruce), 32 No. 6 Tenn. B.J. 12 (1996).

62-13-406. Designated broker — Managing broker. — (a) A licensee entering into a written agreement to represent any party in the buying, selling, exchanging, renting or leasing of real estate may be appointed as the designated and individual agent of this party by the licensee's managing broker, to the exclusion of all other licensees employed by or affiliated with such managing broker. A managing broker providing services under the provisions of the Tennessee Real Estate Broker License Act of 1973 shall not be considered a dual agent if any individual licensee so appointed as designated agent in a transaction, by specific appointment or by written company policy, does not represent interests of any other party to the same transaction.

(b) The use of a designated agency does not abolish or diminish the managing broker's contractual rights to any listing or advertising agreement between the firm and a property owner, nor does this section lessen the managing broker's responsibilities to ensure that all licensees affiliated with or employed by such broker conduct business in accordance with appropriate laws, rules and regulations.

(c) There shall be no imputation of knowledge or information among or between clients, managing broker and any designated agent(s) in a designated agency situation. [Acts 1995, ch. 246, § 8.]

Compiler's Notes. The Tennessee Real Estate Broker License Act of 1973, referred to in (a), is compiled in this chapter.

Section to Section References. This section is referred to in § 62-13-405.

62-13-407. Liability. — A client or other party to whom a real estate licensee provides services as an agent, subagent or facilitator shall not be liable for damages for the misrepresentations of the licensee arising out of such licensee's services unless the client or party knew, or had reason to know, of the misrepresentation. This section shall not limit the liability of a licensee's managing broker for the misrepresentations of the managing broker's licensees. [Acts 1995, ch. 246, § 9; 1996, ch. 772, § 12.]

62-13-408. Application. — This part shall supersede common law to the extent common law is inconsistent with the provisions of this part. [Acts 1995, ch. 246, § 10.]

Part 5—Commercial Real Estate Brokers

62-13-501. Definitions — Form of notice. — As used in this part, unless the context otherwise requires:

(1) "Broker" has the same meaning as used in § 62-13-102;

(2)(A) "Commercial real estate" means any real estate other than:

(i) Real estate containing one (1) to four (4) residential units; or

(ii) Real estate on which no buildings or structures are located and is zoned for no more than one (1) to four (4) family residential units.

(B) "Commercial real estate" does not include single family residential units such as condominiums, town houses, or homes in a subdivision when sold, leased, or otherwise conveyed on a unit-by-unit basis even though these units may be a part of a larger building or parcel of real estate containing more than four (4) residential units;

(3) "Notice" means a notice specifically referencing an agreement entered into after October 1, 1997, to pay commissions in any brokerage contract or lease or memorandum of the foregoing, sworn to and executed by the broker, identifying the subject real estate by lot and block number, or by metes and bounds description and in the form of notice set out hereinafter and containing only the information provided for therein, recorded as provided for hereinafter in § 62-13-503(e), in the office of the register of deeds of the county in which the property is located, not less than ten (10) business days before the transfer of the commercial real estate that is the subject of the agreement. The form of such notice to be recorded shall be:

NOTICE OF AGREEMENT TO PAY LEASING COMMISSION

THIS NOTICE is made as of this _____ day of _____, _____, in accordance with the provisions of T.C.A. Section 62-13-501. The undersigned [Name of Broker][address] makes claim to fees or commissions with respect to the following real property located in the State of Tennessee [property must be identified below by County and City (if any) and by either lot and block or subdivision number, or metes and bounds description].

County: _____

City: _____

Lot And Block No. or Subdivision/Development Name: _____

_____

Property (Metes and Bounds) Description (either fill in here or attach Exhibit):

_____

_____

_____

_____

_____

_____

[The Broker], is entitled to be paid certain leasing fees or commissions based on rental income from the above-described real property pursuant to one or more provisions of the following written instrument (the "Instrument"):

Name/Title of Instrument: _____

Date of Instrument: _____

Name of Parties to Instrument: _____

_____

_____

The Owner of the Property Is: _____

[NOTE: Any party seeking details or any other information regarding the Instrument shall rely only on the Instrument. Without the express written consent of all parties to the Instrument, neither the Instrument nor any other information regarding the Instrument shall be included in this Notice.] THIS NOTICE made for the purpose set out above to be effective as of the day and date first above written.

STATE OF _____

COUNTY OF _____

The Undersigned Broker, being first duly sworn, hereby certifies that the foregoing Notice of Agreement to Pay Leasing Commission is true and

correct, and that the agreement to pay leasing fees or commissions remains in force and has not been terminated.

This the _____ day of _____, _____.

BROKER:

_____

By:

_____

Print Name:

_____

Title:

[NOTE: Insert the appropriate acknowledgment form as required by law and have the broker's signature properly acknowledged.];

(4) "Owner" means the person or persons to whom the fee interest of real estate is titled and does not include a lessee or renter;

(5) "Real estate" means and includes leaseholds, as well as any other interest or estate in land, whether corporeal, incorporeal, freehold or nonfreehold, situated in this state; and

(6) "Subsequent owner" means a purchaser of commercial real estate from the owner or from a previous subsequent owner, but will not include the transferee or purchaser of commercial real estate pursuant to a sale conducted pursuant to title 67, chapter 5, part 25. [Acts 1997, ch. 389, § 1.]

Section to Section References. This section is referred to in § 62-13-503.

Law Reviews. 1996 Real Estate Legislation: What You Don't Know *Can* Hurt You (William R. Bruce), 32 No. 6 Tenn. B.J. 12 (1996).

62-13-502. Enforcement of fee or commission contract against subsequent owners. — A broker who, pursuant to a contract in writing entered into after October 1, 1997, has earned and is owed a fee or commission payable over time with respect to a lease or upon the exercise of an option for renewal or expansion of the lease (whether payable over time or in a lump sum) from the owner of commercial real estate pursuant to such written contract for the broker's services in connection with a lease of commercial real estate, shall have a cause of action to enforce the contract with respect to such fee or commission against a subsequent owner, to the extent such fee or commission accrues during the time such subsequent owner holds title to such commercial real estate, even though the subsequent owner is not a party to the contract, if and only if the subsequent owner has notice of the contract as provided in this part with respect to such fee before obtaining title to the commercial real estate. There shall be no prohibition against a broker giving such notice as required by this part, and any such prohibition is void and unenforceable. [Acts 1997, ch. 389, § 1.]

Section to Section References. This section is referred to in § 62-13-504.

62-13-503. Obligation subject to original contract — Limitation of actions — Recording of notice. — (a) The obligation of a subsequent owner shall be subject to the terms, conditions and defenses available to the contracting parties. A subsequent owner shall be liable for such fees or

commissions only to the extent that the subsequent owner receives rents pursuant to leases with respect to which the broker is entitled to receive a fee or commission under the written contract referenced in the notice provided for in § 62-13-501(a)(3).

(b) Nothing in this part shall be construed to change any agreement between an owner and a subsequent owner or to release an owner from any liability to a broker for such fees or commissions or to restrict or prevent a third-party claim by a subsequent owner against an owner or a previous subsequent owner for indemnification against a claim made by a broker against a subsequent owner based on a liability of such owner or a previous subsequent owner to such broker.

(c) A broker may enforce an obligation under this section against a subsequent owner by filing suit in a court having appropriate jurisdiction within the latter of the following but in no event more than ten (10) years after the recording of the notice:

(1) One (1) year after the transfer of ownership from the owner or a previous subsequent owner to a subsequent owner; or

(2) One (1) year after the claim for a fee or commission accrues.

(d) A notice containing only the information provided in § 62-13-501(a)(3) may be recorded pursuant to this part in the office of the register of deeds in the county where the property is located, and such register of deeds shall accept such notice for recording. After the notice is recorded, the person who tendered it for recording shall promptly deliver a copy to the owner of the subject commercial real estate. Such delivery may be by personal delivery, certified mail, or any delivery service that provides proof of delivery.

(e) Any notice that may be recorded pursuant to this part shall be deemed to be authenticated and eligible for recordation only if such notice conforms to the requirements of § 62-13-501(a)(3). The register of deeds will index this recorded notice under the name of the owner identified in the notice and shall index such recorded notice in the reverse index under the name of the broker who is a party to the document.

(f) Upon a written request by the owner or subsequent owner of the subject commercial real estate, made after all fee or commission rights, with respect to which a notice has been recorded under this part, have been paid in full, or have otherwise been discharged, expired or otherwise are no longer enforceable under applicable law, the broker who recorded the notice (or that broker's successor in interest) shall record a release of that notice with the register of deeds for the county where that notice was recorded.

(g) This part shall not be construed to create a lien on any commercial real estate to which this part applies. [Acts 1997, ch. 389, § 1.]

Section to Section References. This section is referred to in § 62-13-504.

62-13-504. Attorney fees and court costs. — The prevailing party in any litigation seeking to enforce the cause of action granted in § 62-13-502 or in seeking to recover damages or other relief for the wrongful refusal or failure to release the notice as required by § 62-13-503(f), shall be entitled to recover

attorney fees and court costs incurred by reason thereof from the non-prevailing party. [Acts 1997, ch. 389, § 1.]

62-13-505. Immunity of title examiners, title insurers, abstracters and closing agents. — No title examiner, title insurer, abstracter or closing agent shall have any responsibility or liability related to the contents of any document that is the subject of a notice recorded pursuant to this part so long as such title examiner, title insurer, abstractor or closing agent fulfills its obligations, if any, under existing law and its contract to disclose in its title report, abstract, commitment or policy the existence of such notice. [Acts 1997, ch. 389, § 1.]

Part 6—Agency Contracts and Referral Fees

62-13-601. Definitions. — As used in this part, unless the context otherwise requires:

(1) "Agency contract" means a valid written contract authorizing a real estate licensee to act as a party's exclusive agent for the purchase, sale, or lease of real estate;

(2) "Agency relationship" means the relationship resulting from an agency contract; and

(3) "Referral fee" means a commission or any other type of compensation for the referral of a potential buyer, seller, lessor or lessee of real estate. [Acts 1999, ch. 160, § 2.]

62-13-602. Reasonable cause to solicit referral fee. — Reasonable cause does not exist unless the party seeking the referral fee actually introduced the business to the real estate licensee from whom the referral fee is sought and at least one (1) of the following other conditions exists as between the party seeking the referral fee and the real estate licensee from whom the referral fee is sought:

(1) Sub-agency relationship;

(2) Contractual referral fee relationship; or

(3) Contractual cooperative brokerage relationship. [Acts 1999, ch. 160, § 3.]

62-13-603. Unlawful referral solicitation — Unlawful retribution for existence of agency relationship. — (a) It is unlawful for any person or entity to:

(1) Solicit or request a referral fee from a real estate licensee without reasonable cause; or

(2) Threaten to reduce or withhold employee relocation benefits or to take other action adverse to the interests of a client of a real estate licensee because of an agency relationship.

(b) Reasonable cause allows a real estate licensee to solicit or request a referral fee but does not necessarily mean that the licensee has a legal right to be paid a referral fee. [Acts 1999, ch. 160, § 4.]

62-13-604. Unlawful interference with agency relationship. — It is unlawful for a real estate licensee, a relocation firm, or a firm with a corporate relocation policy or benefits, or anyone on behalf of any such licensee or firm, to counsel a client of another real estate licensee on how to terminate or amend an existing agency contract. Communicating corporate relocation policy or benefits to a transferring employee shall not be considered a violation of this part, as long as the communication does not involve advice or encouragement on how to terminate or amend an existing agency contract. [Acts 1999, ch. 160, § 5.]

RULES
OF
TENNESSEE REAL ESTATE COMMISSION

500 James Robertson Parkway
Nashville, Tennessee 37243-1151

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Chapters *Title*

ADMINISTRATIVE HISTORY

Original Chapters 1260-1 through 1260-2 were certified on June 7, 1974, under Chapter 491 of the Public Acts of 1974 as rules in effect when Chapter 491 became effective. The Administrative History following each Rule gives the date on which the rule was certified or the date on which the rule was filed and its effective date if promulgated after March 11, 1974. The Administrative History after each rule also shows the dates of any amendments or repeals.

Amendments to rules 1260-2-.03, 1260-2-.06, 1260-2-.15 and 1260-2-.17 filed November 3, 1977; effective December 5, 1977.

Rules 1260-2-.23 through 1260-2-.26 filed November 3, 1977; effective December 5, 1977.

Amendment to rules 1260-2-.06, 1260-2-.07, 1260-2-.08, 1260-2-.14, 1260-2-.16 and 1260-2-.20 filed September 13, 1978; effective October 30, 1978.

Rules 1260-2-.27 through 1260-2-.30 filed September 13, 1978; effective October 30, 1978.

Rule 1260-2-.31 filed November 14, 1978; effective December 29, 1978.

Original chapter 1260-3 filed November 14, 1978; effective December 29, 1978.

Original chapter 1260-4 filed November 22, 1978; effective January 8, 1979.

Repeal of rules 1260-1-.01 through 1260-1-.09 and 1260-2-.01 through 1260-2-.31 filed March 3, 1980; effective April 27, 1980.

Original chapters 1260-1, 1260-2 and 1260-5 filed March 3, 1980; effective April 27, 1980.

Amendment to rule 1260-5-.04 filed May 30, 1980; effective August 27, 1980.

Amendments to rules 1260-1-.02 and 1260-2-.10 filed September 30, 1980; effective December 15, 1980.

Original rules 1260-5-.01 through 1260-5-.10 filed September 30, 1980; effective December 15, 1980.

Amendments to rules 1260-1-.02, 1260-1-.04, 1260-1-.05, 1260-1-.06, 1260-2-.02, 1260-2-.03, 1260-2-.09, 1260-2-.12 and 1260-5-.05 filed January 21, 1983; effective February 22, 1983.

Amendments to rules 1260-1-.04, 1260-1-.05, 1260-2-.01, 1260-2-.03, 1260-2-.05, 1260-5-.02 through 1260-5-.06, 1260-5-.09 and 1260-5-.10 filed May 11, 1984; effective June 10, 1984.

Original rules 1260-5-.11 through 1260-5-.13 filed May 11, 1984; effective June 10, 1984

Rule 1260-1-.07 filed August 27, 1984; effective September 26, 1984

Original chapter 1260-6 filed April 17, 1985; effective May 17, 1985.

Repeal of rule and new rule 1260-1-.01 filed April 17, 1985; effective May 17, 1985. Amendments to rules 1260-1-.04, 1260-2-.01, 1260-2-.09, 1260-2-.12 and 1260-5-.03 filed April 17, 1985; effective May 17, 1985.

Repeal of rule 1260-1-.03 by Public Chapter 440; effective July 1, 1985.

New rule 1260-2-.32 filed June 4, 1985; effective July 4, 1985.

Amendment to rule 1260-6-.04 filed September 6, 1985; effective October 6, 1985.

Original rule 1260-1-.11 filed April 30, 1987; effective June 14, 1987.

Amendment to rule 1260-2-.03 filed April 30, 1987; effective July 29, 1987.

New rule 1260-2-.33, repeal of rules 1260-2-.06 and 1260-2-.13 and amendments to rules 1260-1-.01 and 1260-2-.08 filed September 16, 1987; effective October 31, 1987.

New rule 1260-5-.14 and amendments to rules 1260-5-.02, 1260-5-.03, 1260-5-.05, 1260-5-.11, and 1260-5-.12 filed November 17, 1987; effective January 1, 1988.

Amendments to rules 1260-1-.01, 1260-2-.01, 1260-5-.03 and new rule 1260-2-.34 filed November 21, 1988; effective January 5, 1989.

Original rules 1260-1-.12 and 1260-5-.15 filed July 14, 1989; effective August 28, 1989.

Original rule 1260-1-.13 filed August 16, 1989, effective September 30, 1989.

Original rule 1260-1-.14 and amendment to rules 1260-2-.02, 1260-2-.08, 1260-2-.32 and 1260-5-.03 filed September 13, 1989; effective October 28, 1989.

Original rules 1260-1-.15 and 1260-2-.35 and amendment to rule 1260-2-.32 filed October 15, 1990; effective November 29, 1990.

Amendments to rules 1260-1-.01, 1260-1-.02, 1260-1-.04, 1260-1-.05, 1260-1-.10, 1260-1-.12, 1260-2-.01 through 1260-2-.03 and 1260-2-.12 filed June 17, 1991; effective August 11, 1991.

Amendments to rules 1260-2-.35 and 1260-5-.03 filed November 4, 1991; effective December 20, 1991.

Amendment to rule 1260-5-.07 and original rule 1260-5-.16 filed February 3, 1992; effective March 19, 1992.

Amendment to rules 1260-1-.05, 1260-2-.12, 1260-2-.34, 1260-2-.35, 1260-5-.03, 1260-5-.04, 1260-5-.16, original rule 1260-1-.17 and repeal of 1260-1-.13 filed March 24, 1994; effective June 7, 1994.

Amendment to rules 1260-1-.02, 1260-1-.04, 1260-1-.06, 1260-1-.10, 1260-1-.12, 1260-1-.15, 1260-2-.03, 1260-2-.10, 1260-2-.11, 1260-2-.12, 1260-2-.32, 1260-2-.33, 1260-2-.35, 1260-5-.03, and 1260-5-.14 filed October 1, 1998; effective December 15, 1998.

Amendment to rules 1260-1-.05, 1260-1-.12, and 1260-6-.12 filed December 8, 1999; effective February 21, 2000.

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CHAPTER 1260-1

LICENSING

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1260-1-.01 APPLICATIONS FOR EXAMINATIONS.

(1) *Affiliate Brokers.* Applicants for the affiliate brokers examination must follow the procedures published by the testing vendor approved by the Tennessee Real Estate Commission concerning appointments for testing, information required, and deadlines for submission of examination applications.

(2) *Brokers.* Applications for the brokers examination must follow the procedures published by the testing vendor approved by the Tennessee Real Estate Commission concerning appointments for testing, information required, and deadlines for submission of examination applications.

(3) An applicant who passes an examination is not necessarily qualified for licensure.

Authority: *T.C.A. §§ 62-13-203 and 62-13-303.* ***Administrative History:*** *Original rule certified June 7, 1974. Repeal and refiled March 3, 1980; effective April 27, 1980. Repeal and new rule filed April 17, 1985; effective May 17, 1985. Amendment filed September 16, 1987; effective October 31, 1987. Amendment filed November 21, 1988; effective January 5, 1989. Amendment filed June 17, 1991; effective August 11, 1991.*

1260-1-.02 EXAMINATIONS.

(1) All examinations are scheduled in advance by the testing vendor which actually administers them. All applicants for examination must comply with the procedures published by the testing vendor approved by the Tennessee Real Estate Commission.

(2)(a) The minimum passing requirement for licensees shall be determined by the testing vendor and based on a study which will determine the difficulty of each examination question for an entry level licensee and

conducted in accordance with the procedures approved by the Tennessee Real Estate Commission.

(b) An applicant may be excused from the "uniform principles of real estate" portion of the examination if he:

1. holds a license in another state and has successfully completed an examination approved by the Tennessee Real Estate Commission; and

2. has attained on the "uniform principles" portion of such examination at least the minimum passing score requirement.

(3) Any applicant detected cheating during an examination shall forfeit his right to grading of the examination and may be subject to further action by the Commission.

(4) In case of failure to pass the examination:

(a) the unsuccessful applicant will be given a written analysis of his test results; and

(b) the unsuccessful applicant must follow reexamination procedures published by the testing service.

Authority: *T.C.A. §§ 62-13-203 and 62-13-304.* ***Administrative History:*** *Original rule certified June 7, 1974. Repealed and refiled March 3, 1980; effective April 27, 1980. Amendment filed September 30, 1980; effective December 15, 1980. Amendment filed January 21, 1983; effective February 22, 1983. Amendment filed June 17, 1991; effective August 11, 1991. Amendment filed October 1, 1998; effective December 15, 1998.*

1260-1-.03 REPEALED.

Authority: *T.C.A. § 62-13-203.* ***Administrative History:*** *Original rule certified June 7, 1974. Repealed and refiled March 3, 1980; effective April 27, 1980. Repeal by Public Chapter 440; effective July 1, 1985.*

1260-1-.04 LICENSES.

(1) No principal broker shall permit an affiliate broker (or broker) under his supervision to engage in the real estate business unless the affiliate broker (or broker) has been issued a valid license.

(2) Each licensee is individually responsible for satisfying all legal requirements for retention of his license, including, but not limited to, paying appropriate fees; and completing real estate education.

(3) Each licensee in a firm must obtain any desired change of affiliation or status through the firm's principal broker.

(4) All Tennessee licensees holding nonresident licenses issued in other states shall file copies of such licenses in the Office of the Tennessee Real Estate Commission and with their principal broker.

(5) A time-share salesperson shall only participate in time-share transactions when he is affiliated with a firm which is affiliated with a registered time-share project.

Authority: *T.C.A. §§ 62-13-203 and 62-13-102(5).* ***Administrative History:*** *Original rule certified June 7, 1974. Repealed and refiled March 3, 1980; effective April 27, 1980. Amendment filed January 21, 1983; effective February 22, 1983. Amendment filed May 11, 1984; effective June 10, 1984. Amendment filed June 17, 1991; effective August 11, 1991. Amendment filed October 1, 1998; effective December 15, 1998.*

1260-1-.05 REPEALED.

Authority: *T.C.A. §§ 62-13-203 and 62-13-208.* ***Administrative History:*** *Original rule certified June 7, 1974. Repealed and refiled March 3, 1980; effective April 27, 1980. Amendment filed January 21, 1983; effective February 22, 1983. Amendment filed May 11, 1984; effective June 10, 1984. Amendment filed June 17, 1991; effective August 11, 1991. Amendment filed March 24, 1994; effective June 7, 1994. Amendment filed December 8, 1999; effective February 21, 2000.*

1260-1-.06 REPEALED.

Authority: *T.C.A. § 62-13-203.* ***Administrative History:*** *Original rule certified June 7, 1974. Repealed and refiled March 3, 1980; effective April 27, 1980. Amendment filed January 21, 1983; effective February 22, 1983. Amendment filed October 1, 1998; effective December 15, 1998.*

1260-1-.07 REPEALED.

Authority: *T.C.A. § 62-1311.* ***Administrative History:*** *Original rule certified June 7, 1974. Repealed March 3, 1980; effective April 27, 1980.*

1260-1-.08 REPEALED.

Authority: *T.C.A. § 62-1311.* ***Administrative History:*** *Original rule certified June 7, 1974. Repealed March 3, 1980; effective April 27, 1980.*

1260-1-.09 REPEALED.

Authority: *T.C.A. § 62-1311.* ***Administrative History:*** *Original rule certified June 7, 1974. Repealed March 3, 1980; effective April 27, 1980.*

1260-1-.10 REPEALED.

Authority: *T.C.A. §§ 62-13-203 and 62-13-208; § 6(c), Chapter 810, Public Acts of 1984. Administrative History: New rule filed August 27, 1984; effective September 26, 1984. Amendment filed June 17, 1991; effective August 11, 1991. Amendment filed October 1, 1998; effective December 15, 1998.*

1260-1-.11 USE OF EDUCATION AND RECOVERY ACCOUNT EARNINGS.

(1) The Commission may utilize earnings of the real estate education and recovery account (established by T.C.A. § 62-13-208) to cover expenses incurred in:

(a) The performance of functions authorized by T.C.A. §§ 62-13-107 and 62-13-108; and

(b) The preparation and dissemination of information for the benefit of licensees, including whatever training of Commission members and staff is reasonably necessary to enable them to advise licensees on pertinent subjects. (Such training may entail procurement of publications and materials; attendance at seminars and conferences; et cetera.)

(2) Without limiting the generality of paragraph (1) of this rule, the Commission may utilize education and recovery account earnings to:

(a) Hold or assist in holding seminars concerning regulatory matters and business practices affecting licenses;

(b) Monitor and evaluate approved post-licensing courses in real estate in order to ensure that they are structured and conducted to provide maximum benefit to licensees; and

(c) Publish and distribute a newsletter containing information of interest to licensees.

(3) This rule shall not be construed to:

(a) Authorize any expenditure or commitment of funds hereunder which would reduce the balance in the education and recovery account to an amount less than five hundred thousand dollars ($500,000.00); or

(b) Preclude the expenditure or commitment of funds specifically appropriated by the General Assembly for any purpose.

Authority: *T.C.A. §§ 62-13-103 and 62-13-208.* ***Administrative History:*** *Original rule filed April 30, 1987; effective June 14, 1987.*

1260-1-.12 FEES. The following fees shall apply:

(1) For each examination, a fee to be paid to the testing vendor as set by state contract;

(2) For the issuance of an original license, a fee to be paid to the Commission of one hundred dollars ($100.00);

(3) For each renewal of a license, a fee to be paid to the Commission of eighty dollars ($80.00);

(4) A fee to be paid to the Commission for the following:

(a) Change of firm address, fifty dollars ($50.00);

(b) Change of Principal Broker, twenty-five dollars ($25.00);

(c) Transfer of affiliation or transfer in or out of retirement status, twenty-five dollars ($25.00);

(d) Commission manual, ten dollars ($10.00);

(e) Certified copies, one dollar ($1.00) per page;

(f) Copies, twenty-five cents ($.25) per page;

(g) Printouts of licensee information, charges will be based upon the cost of producing said printout;

(h) Certification of licensure, twenty-five dollars ($25.00);

(i) Printouts of licensee continuing education, ten dollars ($10.00);

(j) Change of name, ten dollars ($10.00);

(k) Duplicate license, ten dollars ($10.00);

(l) Bad Checks must be made good within five (5) days after the licensee is notified. Any bad check not made good within sixty (60) days of the notification will be subject to a one hundred dollar ($100.00) fee for collection.

Authority: *T.C.A. §§ 62-13-203 and 62-13-308.* ***Administrative History:*** *Original rule filed July 14, 1989; effective August 28, 1989. Amendment filed June 17, 1991; effective August 11, 1991. Amendment filed October 1, 1998; effective December 15, 1998. Amendment filed December 8, 1999; effective February 21, 2000*

1260-1-.13 REPEALED.

Authority: *T.C.A. § 62-13-304(a). Administrative History: Original rule filed August 16, 1989; effective September 30, 1989. Repeal filed March 24, 1994; effective June 7, 1994.*

1260-1-.14 FILING OF DOCUMENTS.

When documents are remitted to the office of the Tennessee Real Estate Commission by mail for filing, the date of filing shall be determined by the official postmark on such mail. Documents submitted by hand-delivery shall not be considered filed if received after the Commission office hours of the date of any applicable deadline.

Authority: *T.C.A. § 62-13-203.* ***Administrative History:*** *Original rule filed September 13, 1989; effective October 28, 1989.*

1260-1-.15 ERRORS AND OMISSIONS INSURANCE COVERAGE.

It shall be a requirement for an active licensee to carry errors and omissions insurance to cover all activities contemplated under the Tennessee Real Estate Broker License Act unless the Commission is unable to obtain coverage pursuant to T.C.A. § 62-13-112(g) which would void the requirement of coverage under the applicable contract period.

(1) A licensee who places his license in an inactive or retired status is not required to carry errors and omissions insurance until such time as his license is activated.

(2) New licensees, licensees who activate their license from an inactive or retired status, and licensees who reinstate their license from an expired status at a time other than the beginning of the licensing period shall pay a prorated premium in accordance with a schedule provided by the insurance provider.

(3) The Commission shall perform random audits to assure that licensees have met the requirements of this rule.

Authority: *T.C.A. §§ 62-13-203 and 62-13-212.* ***Administrative History:*** *Original rule filed October 15, 1990; effective November 29, 1990. Amendment filed October 1, 1998; effective December 15, 1998.*

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CHAPTER 1260-2

RULES OF CONDUCT

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1260-2-.01 SUPERVISION OF AFFILIATE BROKERS.

(1) No licensee shall engage in any real estate activity in any office unless there is a principal broker who devotes his fulltime to the management of such office.

(2) No principal broker shall engage a licensee who lives more than fifty (50) miles from the firm office, unless the principal broker demonstrates in writing to the Tennessee Real Estate Commission's satisfaction that the distance involved is not unreasonable and that adequate supervision can be provided.

(3) A licensee may be engaged only by a principal broker who is:

(a) engaged primarily in the real estate business; and

(b) accessible during normal daytime working hours.

Authority: *T.C.A. §§ 62-13-203 and 62-13-303.* ***Administrative History:*** *Original rule certified June 7, 1974, Repealed and refiled March 3, 1980; effective April 27, 1980. Amendment filed May 11, 1984; effective June 10, 1984. Amendment filed April 17, 1985; effective May 17, 1985. Amendment filed November 21, 1988; effective January 5, 1989. Amendment filed June 17, 1991; effective August 11, 1991.*

1260-2-.02 TERMINATION OF AFFILIATION.

(1) Any licensee wishing to terminate his affiliation with a firm shall secure his release from the firm. The principal broker's supervisory responsibility shall terminate upon his signing of the release form. Within ten (10) days after the date of release, the licensee shall complete the required administrative measures for change of affiliation, temporary retirement, or (if ineligible for temporary retirement) placement in 'inactive' status. Upon the signing of a release by the principal broker for a change of affiliation, the licensee shall not engage in any real estate transactions nor shall he act under a contract with another firm until completion and transmittal to the commission of the change of affiliation form, accompanied by the proper fee.

(2) When a licensee terminates his affiliation with a former firm, he shall neither take nor use any property listings secured through the firm, unless specifically authorized by the principal broker.

(3) The Commission will not intervene in the settlement of debts, loans, draws, or commission disputes between firms, brokers and/r affiliates. Upon demand by a licensee for his release from a firm, it shall be properly and promptly granted by the principal broker.

Authority: *T.C.A. §§ 62-13-203 and 62-13-310.* ***Administrative History:*** *Original rule certified June 7, 1974. Repealed and refiled March 3, 1980; effective April 27, 1980. Amendment filed January 21, 1983; effective February 22, 1983. Amendment filed September 13, 1989; effective October 28, 1989. Amendment filed June 17, 1991; effective August 11, 1991.*

1260-2-.03 OFFICES.

(1) Signs. Every licensed broker shall conspicuously display on the outside of his designated place of business a sign which states that he is in the real estate business.

(2) Zoning. Any application for a license or change of location shall be accompanied by a written certification (from the proper governmental authority) of compliance with zoning laws and ordinances.

(3) Branch Offices. For purposes of T.C.A. § 62-13-309(d), a broker is deemed to maintain a "branch office" if he:

(a) Advertises the office in any manner for the purpose of attracting the public;

(b) Has a mail drop at the office which is registered with and served by the United States Postal Service; or

(c) Invites or solicits telephone calls to the office (by such means as advertising or listing in a telephone directory).

Authority: *T.C.A. §§ 62-13-203 and 62-13-309.* ***Administrative History:*** *Original rule certified June 7, 1974. Amendment filed November 3, 1977; effective December 5, 1977. Repealed and refiled March 3, 1980; effective April*

27, 1980. Amendment filed January 21, 1983; effective February 22, 1983. Amendment filed May 11, 1984; effective June 10, 1984. Amendment filed April 30, 1987; effective July 29, 1987. Amendment filed June 17, 1991; effective August 11, 1991. Amendment filed October 1, 1988; effective December 15, 1998.

1260-2-.04 TELEPHONE ANSWERING SERVICES. No broker shall post his license at a telephone answering service, nor shall any broker conduct the major part of his real estate by or through a telephone answering service; however, reasonable use of a telephone answering service by a broker is permitted.

Authority: *T.C.A. § 62-13-203.* ***Administrative History:*** *Original rule certified June 7, 1974. Repealed and refiled March 3, 1980; effective April 27, 1980.*

1260-2-.05 POST OFFICE BOXES. Use of a post office box as a business location is prohibited. However, a post office box may be included in a business address for the purpose of receiving mail.

Authority: *T.C.A. § 62-13-203.* ***Administrative History:*** *Original rule certified June 7, 1974. Repealed and refiled March 3, 1980; effective April 27, 1980. Amendment filed May 11, 1984; effective June 10, 1984.*

1260-2-.06 REPEALED.

Authority: *T.C.A. § 63-13-203.* ***Administrative History:*** *Original rule certified June 7, 1974. Amendment filed November 3, 1977; effective December 5, 1977. Amendment filed September 13, 1978; effective October 30, 1978. Repealed and refiled March 3, 1980; effective April 27, 1980. Repeal filed September 16, 1987; effective October 31, 1987. Amendment filed November 21, 1988, effective January 5, 1989.*

1260-2-.07 "NET PRICE" LISTING. No broker or affiliate broker shall accept or enter a listing based on a "net price" (i.e., a price excluding the customary commission and expenses associated with the sale).

Authority: *T.C.A. § 62-1311.* ***Administrative History:*** *Original rule certified June 7, 1974. Amendment filed September 13, 1978; effective October 30, 1978. Repealed and refiled March 3, 1980; effective April 27, 1980.*

1260-2-.08 OFFERS TO PURCHASE. A broker or affiliate broker promptly shall tender every written offer to purchase or sell obtained on a property until a contract is signed by all parties. Upon obtaining a proper acceptance of an offer to purchase, or any counteroffer, a broker or affiliate broker promptly shall deliver true executed copies of same, signed by the seller, to both the purchaser and the seller. Brokers and affiliate brokers shall make certain that all of the terms and conditions of the real estate transaction are included in the contract to purchase.

Authority: *T.C.A. §§ 62-1311 and 62-13-203.* ***Administrative History:*** *Original rule certified June 7, 1974. Amendment filed September 13, 1978; effective October 30, 1978. Repealed and refiled March 3, 1980; effective April 27, 1980.*

Amendment filed September 16, 1987; effective October 31, 1987. Amendment filed September 13, 1989; effective October 28, 1989.

1260-2-.09 DEPOSITS AND EARNEST MONEY.

(1) Each broker shall maintain a separate escrow account for the purpose of holding any funds which may be received in his fiduciary capacity as deposits, earnest money, or the like.

(2) An affiliate broker shall pay over to the broker with whom he is under contract all deposits and earnest money immediately upon receipt.

(3) Brokers are responsible at all times for deposits and earnest money accepted by them or their affiliate brokers, regardless of whether such funds are actually held by some other person or firm.

(4) Where a contract authorizes a broker to place funds in an escrow or trustee account, the broker shall clearly specify in the contract:

(a) the terms and conditions for disbursement of such funds; and

(b) the name and address of the person who will actually hold such funds.

(5) A broker may properly disburse funds from an escrow or trustee account:

(a) upon a reasonable interpretation of the contract which authorizes him to hold such funds;

(b) upon securing a written agreement which is signed by all parties having an interest in such funds, and is separate from the contract which authorizes him to hold such funds;

(c) at the closing of the transaction;

(d) upon the rejection of an offer to purchase, sell, rent, lease, exchange, or option real estate;

(e) upon the withdrawal of an offer not yet accepted to purchase, sell, rent, lease, exchange, or option real estate;

(f) upon filing an interpleader action in a court of competent jurisdiction; or

(g) upon the order of a court of competent jurisdiction.

(6) Funds in escrow or trustee accounts shall be disbursed in a proper manner without unreasonable delay.

(7) No postdated check shall be accepted for payment of a deposit or earnest money, unless otherwise provided in the offer.

(8) Earnest money shall be deposited into an escrow or trustee account promptly upon acceptance of the offer, unless the offer contains a statement such as "Earnest money to be deposited by:".

Authority: *T.C.A. § 62-13-203.* ***Administrative History:*** *Original rule certified June 7, 1974. Repealed and refiled March 3, 1980; effective April 27, 1980.*

Amendment filed September 30, 1980; effective December 15, 1980. Amendment filed January 21, 1983; effective February 22, 1983. Amendment filed April 17, 1985; effective May 17, 1985.

1260-2-.10 CLOSING STATEMENTS. If a broker acts as closing agent he shall provide copies of the closing documents to each customer or client.

Authority: *T.C.A. § 62-1311.* ***Administrative History:*** *Original rule certified June 7, 1974. Repealed and refiled March 3, 1980; effective April 27, 1980. Amendment filed October 1, 1998; effective December 15, 1998.*

1260-2-.11 PERSONAL INTEREST.

(1) No broker or affiliate broker shall, either directly or indirectly through a third party, purchase for himself or attempt to purchase or acquire any interest in or option to purchase property listed with him or with his company, or property regarding which he or his company has been approached by the owner to act as broker, without first making a full disclosure of his true position to the owner of the property or to any prospective purchaser for which he has represented for as a client or customer. After acquiring any such personal interest, either directly or indirectly, the broker or affiliate broker shall make a full disclosure of his true position to prospective purchasers who tender offers to buy the property.

(2) All licensees shall identify themselves as a licensee when buying or selling property for themselves.

Authority: *T.C.A. § 62-1311.* ***Administrative History:*** *Original rule certified June 7, 1974. Repealed and refiled March 3, 1980; effective April 27, 1980. Amendment filed October 1, 1998; effective December 15, 1998.*

1260-2-.12 ADVERTISING.

(1) All advertising, regardless of its nature and the medium in which it appears, which promotes the sale or lease of real property, shall conform to the requirements of this rule.

(2) General Principles

(a) No licensee shall advertise to sell, purchase, exchange, rent, or lease property in a manner indicating that the advertiser is not engaged in the real estate business.

(b) No advertisement by a licensee shall direct responses to only a post office box number, telephone number, and/or street address.

(c) Every licensee shall affirmatively and unmistakably indicate in any advertising that he is a licensed real estate agent.

(d) All licensees shall advertise under the firm name offers to purchase, sell, rent, or lease any property. All advertising must be under the direct supervision of the principal broker and must list the firm telephone number.

(e) No licensee shall post a sign on any property for which he does not have an active written authorization from the owner.

(3) A licensee is exempt from paragraph (2) of this rule if the licensee's advertising includes the designation "owner/agent" and the property is not listed.

(4) Advertising for Franchise or Cooperative Advertising Groups.

(a) Any licensee using a franchise trade name or advertising as a member of a cooperative group shall clearly and unmistakably indicate in the advertisement his name, broker or firm name, and firm telephone number (as registered with the Tennessee Real Estate Commission) adjacent to any specific properties advertised for sale or lease in any media.

(b) Any licensee using a franchise trade name or advertising as a member of a cooperative group, when advertising other than specific properties for sale or lease, shall cause the following legend to appear in the advertisement in a manner reasonably calculated to attract the attention of the public: "Each (Franchise Trade Name or Cooperative Group) Office is Independently Owned and Operated."

(c) Any licensee using a trade name on business cards, contracts, or other documents relating to real estate transactions shall clearly and unmistakably indicate thereon:

1. his name and firm telephone number (as registered with the Commission) and:

2. the fact that his office is independently owned and operated.

Authority: *T.C.A. § 62-13-203.* ***Administrative History:*** *Original rule certified June 7, 1974. Repealed and refiled March 3, 1980; effective April 27, 1980. Amendment filed January 21, 1983; effective February 22, 1983. Amendment filed April 17, 1985; effective May 17, 1985. Amendment filed June 17, 1991; effective August 11, 1991. Amendment filed March 24, 1994; effective June 7, 1994. Amendment filed October 1, 1998; effective December 15, 1998.*

1260-2-.13 REPEALED.

Authority: *T.C.A. § 62-1311.* ***Administrative History:*** *Original rule certified June 7, 1974. Repeal and new rule filed March 3, 1980; effective April 27, 1980. Repeal filed September 16, 1987; effective October 31, 1987.*

1260-2-.14 TELEPHONE ANSWERING SERVICES AND POST OFFICE BOXES.

Repealed

Authority: *T.C.A. Section 62-1311.* ***Administrative History.*** *Original Rule certified June 7, 1974. Repealed: filed March 3, 1980; effective April 27, 1980.*

1260-2-.15 APPLICATIONS.

Repealed

Authority: *T.C.A. Section 62-1311.* ***Administrative History.*** *Original Rule certified June 7, 1974. Rule Amended: filed November 3, 1977; effective December 5, 1977. Repealed: filed March 3, 1980; effective April 27, 1980.*

1260-2-.16 REINSTATEMENT OF REAL ESTATE LICENSES.

Repealed.

Authority: *T.C.A. Section 62-1311.* ***Administrative History.*** *Original Rule certified June 7, 1974. Amended: filed September 13, 1978; effective October 30, 1978. Repealed: filed March 3, 1980; effective April 27, 1980.*

1260-2-.17 EXAMINATION OF APPLICANTS.

Repealed.

Authority: *T.C.A. Section 62-1311.* ***Administrative History.*** *Original Rule certified June 7, 1974. Rule Amended: filed November 3, 1977; effective December 5, 1977. Repealed: filed March 3, 1980; effective April 27, 1980.*

1260-2-.18 AFFILIATION OF AFFILIATE BROKERS.

Repealed.

Authority: *T.C.A. Section 62-1311.* ***Administrative History.*** *Original Rule certified June 7, 1974. Repealed: filed March 3, 1980; effective April 27, 1980.*

1260-2-.19 PART-TIME.

Repealed.

Authority: *T.C.A. Section 62-1311.* ***Administrative History.*** *Original Rule certified June 7, 1974. Repealed: filed March 3, 1980; effective April 27, 1980*

1260-2-.20 COMPULSORY LICENSING.

Repealed.

Authority: *T.C.A. Section 62-1311.* ***Administrative History.*** *Original Rule certified June 7, 1974. Amended: filed September 13, 1978; effective October 30, 1978. Repealed: filed March 3, 1980; effective April 27, 1980.*

1260-2-.21 PARTNERS AND OFFICIALS OF FIRMS.

Repealed.

Authority: *T.C.A. Section 62-1311.* ***Administrative History.*** *Original Rule certified June 7, 1974. Repealed: filed March 3, 1980; effective April 27, 1980.*

1260-2-.22 OFFICE FACILITIES.

Repealed.

Authority: *T.C.A. Section 62-1311.* ***Administrative History.*** *Original Rule certified June 7, 1974. Repealed; filed March 3, 1980, effective April 27, 1980.*

1260-2-.23 FEE FOR DIRECTORY.

Repealed.

Authority: *T.C.A. Section 62-1311.* ***Administrative History.*** *Original Rule filed November 3, 1977; effective December 5, 1977. Repealed: filed March 3, 1980; effective April 27, 1980.*

1260-2-.24 FEE FOR OFFICIAL MANUAL.

Repealed.

Authority: *T.C.A. Section 62-1311.* ***Administrative History.*** *Original Rule filed November 3, 1977; effective December 5, 1977, Repealed: filed March 3, 1980; effective April 27, 1980.*

1260-2-.25 ADMINISTRATIVE FEES.

Repealed.

Authority: *T.C.A. Section 62-1311.* ***Administrative History.*** *Original Rule filed November 3, 1977; effective December 5, 1977, Repealed; filed March 3, 1980; effective April 27, 1980.*

1260-2-.26 FEDERAL PRIVACY AND CREDIT REPORTING.

Repealed.

Authority: *T.C.A. Section 62-1311.* ***Administrative History.*** *Original Rule filed November 3, 1977; effective December 5, 1977. Repealed: filed March 3, 1980; effective April 27, 1980.*

1260-2-.27 FAIR HOUSING.

Repealed.

Authority: *T.C.A. Section 62-1311. Administrative History. Original Rule filed September 13, 1978; effective October 30, 1978. Repealed: filed March 3, 1980; effective April 27, 1980.*

1260-2-.28 SCHOOLS, COURSES & INSTRUCTORS.

Repealed.

Authority: *T.C.A. § 62-1311,* ***Administrative History:*** *Original rule filed September 13, 1978; effective October 30, 1978. Repeal filed March 3, 1980; effective April 27, 1980.*

1260-2-.29 CLASSROOM INSTRUCTION FOR COURSES.

Repealed.

bi Authority: *T.C.A. § 62-1311.* ***Administrative History:*** *Original rule filed September 13, 1978; effective October 30, 1978. Repeal filed March 3, 1980; effective April 27, 1980.*

1260-2-.30 REPEALED.

Authority: *T.C.A. § 62-1311.* ***Administrative History:*** *Original rule filed September 13, 1978; effective October 30, 1978. Repeal filed March 3, 1980, effective April 27, 1980.*

1260-2-.31 LICENSE AND BOND RECORDING.

Repealed.

Authority: *T.C.A. § 62-1309.* ***Administrative History:*** *Original rule filed November 14, 1978; effective December 29, 1978. Repeal filed March 3, 1980; effective April 27, 1980.*

1260-2-.32 CIVIL PENALTIES.

(1) The Commission may, in a lawful proceeding respecting any person required to be licensed by the Commission, in addition to or in lieu of any other lawful disciplinary action, assess a civil penalty for each separate violation of a statute, rule, or order pertaining to the Commission with the following schedule:

	Violation	*Penalty*
	T.C.A. § 62-13-103(b)	$ 50 — 1000
	T.C.A. § 62-13-301	50 — 1000
	T.C.A. § 62-13-312(b)	
(1)		250 — 1000
(2)		200 — 900
(3)		300 — 1000
(4)		100 — 800
(5)		(Deleted by 1988 Amendment)
(6)		300 — 1000
(7)		200 — 900
(8)		300 — 1000
(9)		100 — 800
(10)		200 — 900
(11)		300 — 1000
(12)		250 — 1000
(13)		300 — 1000
(14)		300 — 1000
(15)		50 — 1000
(16)		250 — 1000
(17)		250 — 750
(18)		200 — 900
(19)		200 — 950
(20)		250 — 1000
(21)		250 — 1000
(22)		200 — 1000
(23)		100 — 1000

	Violation	*Penalty*
	T.C.A. § 62-25-103(a)	50 — 1000
	T.C.A. § 62-25-107(b)	
(1)		250 — 1000
(2)		250 — 1000
(3)		300 — 1000

Violation	*Penalty*
(4)	50 — 1000
T.C.A. § 66-32-121(f)	
(1)	$ 250 — 1000
(2)	100 — 1000
(3)	200 — 1000
(4)	300 — 1000
(5)	250 — 1000
(6)	250 — 1000
(7)	400 — 1000
(8)	350 — 1000
(9)	400 — 1000
(10)	250 — 1000

(2) With respect to any person required to be licensed by the Commission as a real estate broker who is not licensed, the Commission may assess a civil penalty against such person for each separate violation of a statute in accordance with the following schedule:

Violation	*Penalty*
T.C.A. § 62-13-102	$1,000
T.C.A. § 62-13-103	$1,000
T.C.A. § 62-13-105	$1,000
T.C.A. § 62-13-109	$1,000
T.C.A. § 62-13-110	$1,000
T.C.A. § 62-13-301	$1,000
T.C.A. § 62-13-312	$1,000

(3) Each day of a continued violation may constitute a separate violation.

(4) In determining the amount of a civil penalty the Commission may consider such factors as the following:

(a) whether the amount imposed will be a substantial economic deterrent to the violation;

(b) the circumstances leading to the violation;

(c) the severity of the violation and the risk of harm to the public;

(d) the economic benefits gained by the violator as a result of noncompliance; and

(e) the interest of the public.

Authority: *T.C.A. §§ 56-1-308 and 62-13-203.* ***Administrative History:*** *New rule filed June 4, 1985; effective July 4, 1985, Amendment filed September 13, 1989; effective October 28, 1989. Amendment filed October 15, 1990; effective November 29, 1990. Amendment filed October 1, 1998; effective December 15, 1998.*

1260-2-.33 GIFTS AND PRIZES.

(1) A licensee may offer a gift, prize, or other valuable consideration as an inducement to the purchase, listing, or lease of real estate only if the offer is made:

(a) Under the sponsorship and with the approval of the firm with whom the licensee is affiliated; and

(b) In writing, signed by the licensee, with disclosure of all pertinent details, including but not limited to:

1. accurate specifications of the gift, prize, or other valuable consideration offered;

2. fair market value;

3. the time and place of delivery; and

4. any requirements which must be satisfied by the prospective purchaser or lessor.

(2) No cash rebates, cash gifts, or cash prizes may be paid to any person who does not hold a real estate license.

Authority: *T.C.A. § 62-13-203.* ***Administrative History:*** *New rule filed September 16, 1987; effective October 31, 1987. Amendment filed October 1, 1998; effective December 15, 1998.*

1260-2-.34 INTERPLEADER FORM.

Actions in the nature of interpleader, in which the value of money which is the subject of the action does not exceed the jurisdictional limit of General Sessions Court, may be filed in General Sessions Court pursuant to *T.C.A. § 16-15-731.* The following form may be used, as appropriate, alone, or in conjunction with forms currently used by the General Sessions Court in which the action is to be filed.

IN THE GENERAL SESSIONS COURT OF
_____ COUNTY, TENNESSEE

_____
Plaintiff
v. General Sessions No. _____

_____
Defendant

_____
Defendant

PETITION TO INTERPLEAD FUNDS

_____

STATE OF TENNESSEE
COUNTY OF _____
_____, being duly sworn, deposes and says:

I

_____, the defendant, resides at _____, in the above-named county, and the mailing address of the defendant is _____.

II

_____, the defendant, resides at _____, in the above-named county and the mailing address of the defendant is _____.

III

The Plaintiff has custody or possession of money in the amount of $_____, held pursuant to the following:

_____
_____
_____

IV

Plaintiff has no interest in this money. The defendants claim or may claim be entitled to such money; the defendant's claims to the money are adverse.

V

The plaintiff deposits herewith into the court $ _____ which equals the amount of such money to be invested in accordance with the order of the court and will abide with the judgment of the court as to the final disposition thereof, and therefore, requests to be dismissed from this action.

_____

Subscribed to and sworn before me this _____, day of _____, 19 ____.

_____
NOTARY PUBLIC

My commission expires: _____

ORDER

To each of the within named defendants:

You are hereby directed to appear and answer the foregoing claim and to have with you all books, papers, and witnesses needed by you to establish your claim to such money. This matter shall be heard on the _____ day of _____, 19____, at _____ o'clock ____ m.

Be advised that failure to appear may result in a judgment adverse to your interests which would determine or foreclose your claim to the above-described money as well as the disposition thereof, and for the costs of this action.

Enter this the _____ day of _____, 19____.

_____

Authority: *T.C.A. §§ 62-13-203 and 16-15-731.* ***Administrative History:*** *New rule filed November 21, 1988; effective January 5, 1989. Amendment filed March 24, 1994; effective June 7, 1994.*

1260-2-.35 REPEALED.

Authority: *T.C.A. §§ 62-13-203.* ***Administrative History:*** *Original rule filed October 15, 1990; effective November 29, 1990. Amendment filed November 4, 1991; effective December 20, 1991. Amendment filed March 24, 1994; effective June 7, 1994. Amendment filed October 1, 1998; effective December 15, 1998.*

RULES
OF
TENNESSEE REAL ESTATE COMMISSION

CHAPTER 1260-4

RULES OF PROCEDURE FOR HEARING CONTESTED CASES

For Rules of Procedure for Hearing Contested Cases see Rules of the Secretary of State, Chapter 1360-1-7.

Authority: T.C.A. § 4-509. Administrative History. *Original Chapter filed November 22, 1978, effective January 8, 1979.*

RULES
OF
TENNESSEE REAL ESTATE COMMISSION

CHAPTER 1260-5

EDUCATIONAL REQUIREMENTS

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1260-5-.01 PURPOSE. The Tennessee Real Estate Broker License Act of 1973 (as amended) requires satisfactory completion of certain courses in real estate by applicants for, and holders of, licenses as a broker or affiliate broker. The purpose of this chapter is to specify standards and procedures governing the establishment and operation of courses, programs, and schools which are designed to satisfy such educational requirements.

Authority: *T.C.A. §§ 62-13-106 and 62-13-203,* ***Administrative History:*** *Original rule filed March 3, 1980; effective April 27, 1980, Amendment filed September 30, 1980; effective December 15, 1980.*

1260-5-.02 APPLICATIONS.

(1) The sponsor of any course(s) in real estate for which the approval of the Tennessee Real Estate Commission under *T.C.A. § 62-13-303* is sought shall submit an application on the form prescribed by the Commission. The application shall be accompanied by:

(a) a resume outlining the education and experience of the instructor(s) of such course(s);
(b) a detailed description of the content of such course(s);
(c) the projected schedule for the teaching of such course(s); and
(d) such other information as the Commission may reasonably request.

Authority: *T.C.A. §§ 62-13-106, 62-13-203 and 62-13-303.* ***Administrative History:*** *Original rule filed March 3, 1980; effective April 27, 1980. Amendment filed May 11, 1984; effective June 10, 1984. Amendment filed November 17, 1987, effective January 1, 1988.*

1260-5-.03 REQUIREMENTS FOR COURSES.

(1) the applicant shall demonstrate to the satisfaction of the Commission that each course submitted for approval will:

(a) cover subjects which are reasonably related to the practice of real estate and suitable advanced to benefit and enrich the students enrolled;

(b) be conducted in a facility which contains adequate space, seating, and equipment;

(c) consist of no fewer than two (2) classroom hours; and

(d) incorporate appropriate methods for determining whether a student has successfully completed such course. Such methods shall include, but not be limited to:

1. a minimum attendance requirement of eighty percent (80%), except that such requirement shall be one hundred percent (100%) if the course consists of eight (8) or fewer classroom hours.

2. provisions to make up for all classes missed by a student; and

3. a minimum passing requirement of seventy percent (70%) and a comprehensive final examination (or equivalent measure of achievement), if the course consists of more than eight (8) classroom hours. However, courses taken by affiliate brokers or brokers of eight (8) classroom hours or less may be approved for continuing education or post licensing credit without a comprehensive final examination being given.

(2) Each hour of classroom instruction required by *T.C.A. § 62-13-303* shall consist of fifty (50) minutes of actual instruction.

(3) There shall be a sixty (60) hour course in basic principles required of all applicants for an affiliate brokers license under *T.C.A. § 62-13-303*. The "basic principles of real estate" course required of applicants for affiliate broker's licenses by *T.C.A. § 62-13-303* shall include significant instruction in the following areas:

(a) the real estate business

(b) the agency relationship

(c) contracts (listings; leases; sales)

(d) governmental controls on real estate, including the Tennessee Real Estate Broker License Act

(e) legal aspects of real estate

(f) real estate mathematics

(g) real estate valuation

(h) real estate finance

(i) listing, offer to purchase, and settlement forms

(j) Tennessee real estate laws, rules, practice, etc.

(k) fair housing

(l) any additional subject which the Commission may require by reasonable written notice to course sponsor and/or instructor.

(4) The "office or brokerage management" course required of applicants for broker's licenses by *T.C.A. § 62-13-303* shall include significant instruction in the following areas:

(a) overview of theories, processes, and functions of management

(b) review of contracts and closing statements

(c) transition to management role

(d) planning; policy-making; setting objectives

(e) organizing and staffing

(f) recruiting, selecting, training, and retaining sales and office personnel

(g) written instruments; policy and procedures manual; contract between independent contractor and broker, and contract between salesperson-employee and broker

(h) financial systems and records

(i) processes, procedures, and methods of control

(j) stages of development in real estate firms

(k) market analysis

(l) horizontal and vertical expansions

(m) mergers and acquisitions

(n) governmental controls on real estate including the Tennessee Real Estate Broker License Act

(o) any additional subject which the Commission may require by reasonable written notice of the course sponsor and/or instructor.

5. (a) Effective January 1, 1993, the content of all courses approved by the Commission for continuing education category (3) credit shall be directly related to the following topics:

1. Valuation of Real Estate

2. Construction-Property condition, energy

3. Contracts

4. Agency

5. Financing Real Estate

6. Investment Real Estate

7. License Law and Rules

8. Property Management
9. Taxation of Real Estate Transaction
10. Closing and Settlement Procedures
11. Land Use, Planning and Zoning
12. Time-shares
13. Type of Property (condo, dom, pud, zero lot line, single, pud, etc.)
14. Fair Housing
15. Antitrust
16. Ethics in Real Estate
17. Professional Liability

(b) The Commission may add or delete any subject by means of reasonable written notice to the course sponsor and/or instructor.

6. Any person holding a college degree with a major in real estate shall be deemed to have met the requirements for prelicensing education required for an affiliate brokers' license.

Authority: *T.C.A. §§ 62-13-106, 62-13-203 and 62-13-303.* ***Administrative History:*** *Original rule filed March 3, 1980; effective April 27, 1980. Amendment filed September 30, 1980; effective December 15, 1980. Amendment filed May 11, 1984; effective June 10, 1984. Amendment filed April 17, 1985; effective May 17, 1985. Amendment filed November 17, 1987; effective January 1, 1988. Amendment filed November 21, 1988; effective January 5, 1989. Amendment filed September 13, 1989; effective October 28, 1989. Amendment filed November 4, 1991; effective December 20, 1991. Amendment filed March 24, 1994; effective June 7, 1994. Amendment filed October 1, 1998; effective December 15, 1998.*

1260-5-.04 QUALIFICATIONS FOR INSTRUCTORS.

(1) In order to be eligible for approval by the Commission, a course in real estate designed to meet the educational requirements established in *T.C.A. § 62-13-303* shall be under the personal and direct supervision of an instructor who:

(a) effective January 1, 1995, has completed a Tennessee Real Estate Commission approved course in instructor training;

(b) holds a diploma or certificate evidencing a high school education or the equivalent thereof;

(c) has no complaints filed against him in the Office of the Commission which have not been satisfactorily resolved;

(d) if such course concerns the principles of real estate, mathematics, or sales techniques, is a licensed broker (or, with the approval of the

Commission, affiliate broker) with at least five (5) years of experience in the subject of such course;

(e) if such course concerns the law of real estate, has graduated from a law school accredited by the American Bar Association or approved by the State Board of Law Examiners;

(f) if such course concerns any other field in which a degree or other recognized designation is commonly awarded, has earned such degree or designation, or has at least five (5) years of satisfactory experience in the field; and

(g) if such course is offered for credit at a college or university, has either a master's degree and three (3) years of satisfactory experience in the area of instruction or a terminal degree in the area of instruction.

Authority: *T.C.A. §§ 62-13-106 and 62-13-203.* ***Administrative History:*** *Original rule filed March 3, 1980; effective April 27, 1980. Amendment filed May 11, 1984; effective June 10, 1984. Amendment filed March 24, 1994; effective June 7, 1994*

1260-5-.05 TENNESSEE REALTORS' INSTITUTE. Applicants for affiliate broker's or broker's licenses who elect to obtain their real estate education through the Tennessee Realtors' Institute shall remain subject to the "basic principles of real estate" and "office or brokerage management" course requirements (respectively) of *T.C.A. § 62-13-303.*

Authority: *T.C.A. §§ 62-13-106, 62-13-203 and 62-13-303.* ***Administrative History:*** *Original rule filed March 3, 1980; effective April 27, 1980. Amendment filed September 30, 1980; effective December 15, 1980. Amendment filed January 21, 1983; effective February 22, 1983. Amendment filed May 11, 1984; effective June 10, 1984. Amendment filed November 17, 1987; effective January 1, 1988.*

1260-5-.06 RELATIONSHIP WITH BROKERS.

(1) No course in real estate which is designed to satisfy educational requirements established in T.C.A. § 62-13-303 may be:

(a) conducted in a facility which is also utilized for conducting business of a broker or brokerage firm; or

(b) advertised in conjunction with any advertisement for the business of a broker or brokerage firm.

(2) No broker or brokerage firm shall use or cause to be used any facility in which a course in real estate designed to satisfy educational requirements established in T.C.A. § 62-13-303 is conducted for the purpose of discussing, inducing, or promoting affiliation with such broker or brokerage firm.

Authority: *T.C.A. §§ 62-13-106 and 62-13-203.* ***Administrative History:*** *Original rule filed March 3, 1980; effective April 27, 1980. Amendment filed May 11, 1984; effective June 10, 1984.*

1260-5-.07 RECORDS.

(1) The sponsor of any course(s) approved by the Commission shall maintain accurate and permanent records on all students enrolled in such course(s). The records shall include all information and ratings considered in determining whether students successfully complete such course(s). Such records shall be made available upon request by the Commission or its authorized representative.

(2) It shall be the responsibility of each licensee to provide his file identification number at the time of registration for any Tennessee Real Estate Commission approved continuing education course for affiliate brokers, or post licensing course for brokers. If the licensee fails to provide his file identification number to the sponsor, he may not receive credit for the course from the Tennessee Real Estate Commission.

(3) Each sponsor of any Tennessee Real Estate Commission approved continuing education course for affiliate brokers, or post licensing course for brokers, shall submit, within ten (10) working days of the completion of the course, to the Commission, a roster of all students who successfully complete each course. The roster shall include the name, social security number and file identification number of each student. This information must be provided on a roster form approved by the Commission.

Authority: *T.C.A. §§ 62-13-106, 62-13-203 and 62-13-303.* ***Administrative History:*** *Original rule filed March 3, 1980; effective April 27, 1980. Amendment filed May 11, 1984; effective June 10, 1984. Amendment filed February 3, 1992; effective March 19, 1992.*

1260-5-.08 INSPECTIONS. By applying for the Commission's approval of any course in real estate, the applicant agrees to permit periodic inspections and monitoring by the Commission or its authorized representative for the purposes of evaluating facilities, course content, instructor performance, or any other relevant aspect of the administration and conduct of such course.

Authority: *T.C.A. §§ 62-13-106 and 62-13-203.* ***Administrative History:*** *Original rule filed March 3, 1980; effective April 27, 1980. Amendment filed May 11, 1984; effective June 10, 1984.*

1260-5-.09 CHANGES IN APPLICATIONS. Any material change in any information furnished in connection with any application for approval of a course (including, but not limited to, information concerning course content, instructors, and facilities) shall be submitted to and approved by the Commission before taking effect.

Authority: *T.C.A. §§ 62-13-106 and 62-13-203.* ***Administrative History:*** *Original rule filed March 3, 1980; effective April 27, 1980. Amendment filed May 11, 1984; effective June 10, 1984.*

1260-5-.10 WITHDRAWAL OF APPROVAL. Approval of any course(s) may be withdrawn by the Commission if:

(a) the establishment or conduct of a course violates, or fails to meet the requirements of, the provisions of this chapter or other applicable law.

(b) the information contained in the application for approval is materially inaccurate or misleading;

(c) the sponsor, an instructor, or any other school representative disseminates false or misleading information concerning any course;

(d) the sponsor, an instructor, or any other school representative possesses, claims to possess, reveals, or distributes any questions utilized in examinations given by the Commission; or

(e) the performance of the instructor is so deficient as to impair significantly the value of a course; provided, however, that the instructor shall receive adequate notice of the discovered deficiency and opportunity to demonstrate satisfactory correction thereof.

Authority: *T.C.A. §§ 62-13-106 and 62-13-203.* ***Administrative History:*** *Original rule filed March 3, 1980; effective April 27, 1980. Amendment filed May 11, 1984; effective June 10, 1984*

1260-5-.11 CORRESPONDENCE COURSES. Subject to compliance with all applicable provisions of this Chapter, a correspondence course may qualify for approval by the Commission as a post-licensing course only if the sponsor satisfactorily demonstrates that each student will be:

(a) furnished a manual containing:

1. a comprehensive course outline;
2. specific reading and writing assignments;
3. requirements for successful completion of the course; and
4. information regarding availability of faculty to students.

(b) required to complete a minimum of forty-eight (48) hours of assignments which:

1. include at least six (6) written exercises submitted periodically to the instructor, graded, and returned to the student; and
2. are designed progressively to reinforce and supplement knowledge acquired.
3. Required to complete a comprehensive final examination, or equivalent measure of achievement, administered under the supervision of the faculty or staff of an educational institution.

Authority: *T.C.A. §§ 62-13-106, 62-13-203 and 62-13-303.* ***Administrative History:*** *Original rule filed May 11, 1984; effective June 10, 1984. Amendment filed November 17, 1987; effective January 1, 1988.*

1260-5-.12 AFFILIATE BROKERS.

(1) The Commission may, in its discretion, designate that a portion of the continuing real estate education required of affiliate brokers by *T.C.A. § 62-13-303* be composed of specific topic(s).

(2) The "office or brokerage management" course required of applicants for broker's licenses will not be approved as a post-licensing or continuing education course for affiliate brokers.

(3) (a) An affiliate broker whose license was originally issued between July 1, 1980, and December 31, 1987, will not be eligible for renewal of the license for the 1989-90 license period unless, during the calendar year 1988, such affiliate broker satisfactorily completes at least eight (8) classroom hours of continuing real estate education. However, this subparagraph shall not apply to an affiliate broker whose license was temporarily retired in accordance with T.C.A. § 62-13-318 for the entire calendar year 1988.

(b) An affiliate broker whose license was originally issued on or after July 1, 1980 will not be eligible for renewal of the license for 1991-92 or thereafter unless, during the immediately preceding two-year license period, such affiliate broker satisfactorily completes at least sixteen (16) classroom hours of continuing real estate education. However, this subparagraph shall not apply to an affiliate broker whose license:

1. was originally issued during the immediately preceding two-year license period; or

2. was temporarily retired in accordance with T.C.A. § 62-13-318 for the *entire* immediately preceding two-year license period.

(c) An affiliate broker will not receive continuing education credit for classroom hours completed prior to licensure, or during a prior license period.

Authority: *T.C.A. §§ 62-13-106, 62-13-203 and 62-13-303.* ***Administrative History:*** *Original rule filed May 11, 1984; effective June 10, 1984. Amendment filed November 17, 1987; effective January 1, 1988. Amendment filed November 21, 1988; effective January 5, 1989.*

1260-5-.13 PROMOTIONAL MATERIALS. No materials shall be used for advertising or promoting any course designed to meet the requirements of T.C.A. § 62-13-303 without advance approval by the Commission. Any statements or claims made in such materials must be factually supported.

Authority: *T.C.A. §§ 62-13-106, 62-13-203 and 62-13-303.* ***Administrative History:*** *Original rule filed March 3, 1980; effective April 27, 1980. Amendment filed May 11, 1984; effective June 10, 1984.*

1260-5-.14 REPETITION OF COURSE CONTENT. Credit for completion of real estate education required under *T.C.A. § 62-13-303* will not be awarded where the content of a course duplicates or repeats that for which credit has

been previously received. This rule is only limited to duplication within the same renewal period.

Authority: *T.C.A. §§ 62-13-106, 62-13-203 and 62-13-303.* ***Administrative History:*** *Original rule filed November 17, 1987; effective January 1, 1988. Amendment filed October 1, 1998; effective December 15, 1998.*

1260-5-.15 FEE FOR EDUCATIONAL COURSE APPLICATION. Before any educational course is reviewed for approval by the Commission, the following non-refundable fees shall be paid according to the following hourly credit schedule:

(1) any course not exceeding eight (8) hours a fee of twenty-five dollars ($25.00);

(2) any course from nine (9) hours to thirty (30) hours a fee of fifty dollars ($50.00);

(3) any course exceeding thirty (30) hours a fee of one hundred dollars ($100.00).

Authority: *T.C.A. § 62-13-203.* ***Administrative History:*** *Original rule filed July 14, 1989; effective August 28, 1989.*

1260-5-.16 COURSE APPROVAL PERIODS.

(1) All real estate education course approvals in effect on December 31, 1992 shall expire on that date.

(2) All course providers shall be required to resubmit their courses for approval at least one hundred twenty (120) days prior to the applicable expiration date. Failure to meet this deadline may result in the non-approval of a course.

(3) Effective January 1, 1993, each course approval shall remain effective for four (4) years. After four (4) years, the approval of the Commission, shall expire, unless the Commission, after reviewing a new course application, approves the course for another such time period.

(4) Effective January 1, 1993, the Commission will approve courses based upon a four (4) year review cycle. Each cycle will end on December 31st of the fourth year. The first four (4) year period of approval will end December 31, 1996.

(5) The Commission reserves the right to issue approvals for periods of less than four (4) years.

Authority: *T.C.A. §§ 62-13-106, 62-13-203 and 62-13-303.* ***Administrative History:*** *Original rule filed February 3, 1992; effective March 19, 1992. Amendment filed March 24, 1994; effective June 7, 1994.*

1260-5-.17 COURSE INTERMISSION. No course offered for eligibility for the affiliate brokers examination shall be held for more than six (6) hours in

any twenty-four (24) hour period. There must be at least eight (8) hours of intermission between any two (2) sessions of the course.

Authority: *T.C.A. §§ 62-13-106, 62-13-203 and 62-13-303.* ***Administrative History:*** *Original rule filed March 24, 1994; effective June 7, 1994.*

TITLE 62

PROFESSIONS, BUSINESSES AND TRADES

CHAPTER 25

RENTAL LOCATION AGENTS

62-25-101. Short title. — This chapter shall be known and may be cited as the "Rental Location Agent Act of 1978." [Acts 1978, ch. 663, § 1; T.C.A., § 62-2501.]

Cross-References. Liability of professional societies, ch. 50, part 1 of this title.

Comparative Legislation. Rental location agents:

Ala. Code § 34-27-1 et seq.
Ark. Code § 17-42-101 et seq.
Ga. O.C.G.A. § 43-40-1 et seq.
Ky. Rev. Stat. Ann. § 324.010 et seq.
Miss. Code Ann. § 73-35-1 et seq.
Mo. Rev. Stat. § 339.010 et seq.
N.C. Gen. Stat. § 66-142 et seq.
Va. Code § 54.1-2102 et seq.

Collateral References. Recovery of money paid to unlicensed person required by law to have occupation or business license or permit to make contract. 74 A.L.R.3d 637.

62-25-102. Definitions. — As used in this chapter, unless the context otherwise requires:

(1) "Person" means any natural person, corporation, partnership, firm or association; and

(2) "Rental location agent" means any person who engages in or is employed in the business of locating, providing assistance in locating, or furnishing information concerning the location or availability of real property, including apartment housing, which may be leased or rented as a private dwelling, abode or place of residence, and who receives or solicits a fee or other valuable consideration from a prospective tenant. [Acts 1978, ch. 663, § 2; T.C.A., § 62-2502.]

Section to Section References. This section is referred to in § 62-25-104.

62-25-103. License requirements — Rules and regulations — Enforcement of chapter — Penalties. — (a) It is unlawful for any person to engage in the business or capacity of a rental location agent in this state without first having obtained a license from the real estate commission. A license held by a real estate broker or real estate salesperson employed by a licensed real estate broker is deemed to satisfy the license requirements of this chapter.

(b) The application for such license shall be filed in the office of the real estate commission on such forms as the commission may prescribe and shall be accompanied by a fee of ten dollars ($10.00). All licenses shall expire on July 31 of each year.

(c) In order to effectuate the purposes of this chapter, the commission shall have the power to promulgate all necessary rules and regulations.

(d)(1) The real estate commission may apply to a court of competent jurisdiction for an order enjoining any act or practice which constitutes a violation of this chapter.

(2) Upon a finding by the court that there are reasonable grounds to believe that a person is engaging in any such act or practice or is about to engage in any such act or practice, an injunction, a restraining order, or any other appropriate order shall be granted by the court, regardless of the existence of another remedy.

(3) Any proceeding for relief pursuant to this section shall be in accordance with the Tennessee Rules of Civil Procedure.

(e)(1) Every rental location agent shall secure a bond executed to the state of Tennessee by a surety company duly authorized to do business in this state.

(2)(A) Such bond shall be in a form approved by the district attorney general, and shall be for the use and benefit of any person who may be injured or aggrieved by the wrongful act or default of such rental location agent.

(B) Any person so injured or aggrieved may bring an action in such person's own name on such bond without assignment thereof.

(3)(A) The bond required by subdivisions (e)(1) and (2) shall be in the amount of ten thousand dollars ($10,000); provided, that such bond may be in the amount of two thousand five hundred dollars ($2,500) for any rental location agent employed by a corporation, partnership, firm or association which is licensed under this chapter.

(B) Such bond shall be in full force and effect at all times and places in which the licensee acts as a rental location agent in this state.

(4) Each bond secured pursuant to this subsection shall be recorded in the office of the clerk of the county in which the licensee maintains an office or is employed. Until such bond is so recorded, the holder of the license shall not exercise any of the rights and privileges therein conferred.

(5) Any licensed real estate broker or affiliate broker who has obtained a bond in accordance with chapter 13 of this title need not secure an additional bond hereunder; however, the provisions of § 62-13-306 [repealed] shall apply with respect to any wrongful act or default of a broker or affiliate broker occurring in the broker's or affiliate broker's capacity as a rental location agent.

(f) A violation of this section is a Class C misdemeanor. [Acts 1978, ch. 663, § 3; 1981, ch. 298, § 1; T.C.A., § 62-2503; Acts 1982, ch. 864, § 17; 1989, ch. 591, § 113.]

Compiler's Notes. Section 62-13-306, referred to in subdivision (e)(5), was repealed by Acts 1984, ch. 810, § 7, which act enacted § 62-13-208 concerning the real estate education and recovery account.

Cross-References. Director of division of

regulatory boards to promulgate rules establishing renewal dates of licenses, certificates or permits, § 56-1-302.

Penalty for Class C misdemeanor, § 40-35-111.

62-25-104. Contract or receipt requirement — Refund of fee. — (a) Every location rental agent engaged in any of the activities described in § 62-25-102(2) shall give a prospective tenant a contract or receipt, and such contract or receipt shall include a recital that any amount in excess of ten dollars ($10.00) shall be repaid or refunded to the prospective tenant if the prospective tenant after bona fide effort does not obtain a rental through the listing furnished by the rental location agent.

(b) Notwithstanding any other provision of this section, if the information concerning rentals furnished by the rental location agent is not current or accurate in regard to the type of rental desired, the full fee shall be repaid or refunded to the prospective tenant upon demand.

(c) The contract or receipt furnished to the prospective tenant shall also conform to rules and regulations adopted by the real estate commission designed to effect disclosure of material information regarding the services to be provided to the prospective tenant. [Acts 1978, ch. 663, § 4; T.C.A., § 62-2504.]

Cross-References. Violation of this section is a Class C misdemeanor, § 62-25-105.

Section to Section References. This section is referred to in § 62-25-105.

62-25-105. Penalties. — (a) It is unlawful for any person to knowingly refer a prospective tenant to:

(1) A nonexistent address;

(2) Property which is not for lease or rent;

(3) Property which does not meet the specifications of the prospective tenant;

(4) Property which leases or rents for a different price from that quoted by the rental location agent;

(5) Property which has already been leased or rented; or

(6) Property listed without the consent of the landlord.

(b) It is unlawful for any person acting as a rental location agent to advertise in any manner without including the person's name and the fact that the person is a rental location agent in the advertisement.

(c) It is unlawful for any person acting as a rental location agent to solicit a listing from a landlord after receipt of written notice from the landlord requesting that no further solicitations be made.

(d) A violation of subsections (a), (b) or (c) of this section, or § 62-25-104, is a Class C misdemeanor. [Acts 1978, ch. 663, § 5; T.C.A., § 62-2505; Acts 1989, ch. 591, § 113.]

Cross-References. Penalty for Class C misdemeanor, § 40-35-111.

62-25-106. Award for damages, costs and attorney fees. — In a civil action, any successful prospective tenant shall be entitled to an award for

damages, court costs and reasonable attorney fees. [Acts 1978, ch. 663, § 6; T.C.A., § 62-2506.]

Collateral References. Excessiveness or inadequacy of attorney's fees in matters involving commercial and general business activities. 23 A.L.R.5th 241.

62-25-107. Investigation by real estate commission — Suspension or revocation of license. — (a) The real estate commission, upon its own motion or upon a signed complaint made by any person in writing, may investigate the activities of any rental location agent in this state or any person who acts in such a capacity.

(b) The commission may suspend, revoke or refuse to issue or renew a rental location agent's license on any of the following grounds:

(1) Proof of financial irresponsibility or insolvency;

(2) Making any materially false or misleading statement or omission in an application for a license;

(3) Conviction of, or a plea of nolo contendere to, a felony or misdemeanor, if the commission finds that such conviction or plea renders the applicant or licensee insufficiently trustworthy to deal with the public; or

(4) Any violation of this chapter, or of any rule duly adopted by the commission thereunder.

(c) The license of any real estate broker or affiliate broker who acts as a rental location agent may be suspended or revoked on any of the grounds stated in subsection (b). [Acts 1978, ch. 663, § 7; 1981, ch. 298, §§ 2, 3; T.C.A., § 62-2507.]

62-25-108. Service of process. — (a)(1) If a rental location agent cannot with reasonable diligence be found at the last known place of business as reflected by the real estate commission records, the real estate commission shall be an agent of such rental location agent upon whom any process, notice or demand may be served.

(2) Service on the commission of any such process, notice or demand shall be made in the same manner provided for service on the secretary of state pursuant to § 20-2-205.

(b) The commission shall keep a record of all processes, notices and demands served upon it under this section and shall record therein the time of such service and its action with reference thereto.

(c) Nothing in this section limits or affects the right to serve any process, notice or demand required or permitted by law to be served upon a rental location agent in any other manner now or hereafter permitted by law or by applicable rules of procedure. [Acts 1978, ch. 663, § 8; T.C.A., § 62-2508.]

RULES
OF
THE TENNESSEE REAL ESTATE COMMISSION

CHAPTER 1260-3

RENTAL LOCATION AGENTS

TABLE OF CONTENTS

1260-3-.01 RENTAL LOCATION AGENCY LICENSE. Each individual or firm (partnership, corporation, or association) other than licensed real estate brokers or real estate salesmen employed by licensed real estate brokers is hereby required to obtain a special license to operate in the State of Tennessee as a Rental Location Agency and furnish proof to the Commission of honesty, integrity, and business organization by supplying information on a special application designed for this purpose before beginning operations as a "Rental Location Agent." The Tennessee Real estate Commission may require the applicant to personally appear before the Commission for an oral examination or interview.

Authority: *T.C.A. § 62-2501.* ***Administrative History*** *Original Rule filed November 14, 1978, effective December 29, 1978.*

1260-3-.02 RENTAL LOCATION AGENT'S LICENSES. Each individual employee of a licensed rental location agency will be required to obtain a separate license and complete a similar license application before beginning employment in a rental location agency. This individual license shall be issued, renewed, or transferred on the same basis as all other licenses issued by the Tennessee Real Estate Commission. Changes of business address will be considered transfers of license and retirements will not be allowed.

Authority: *T.C.A. § 62-2501.* ***Administrative History.*** *Original Rule filed November 14, 1978, effective December 29, 1978.*

1260-3-.03 INVESTIGATIONS AND OFFICE INSPECTIONS. Agency license applicants or individual applicants for license shall be subject to a credit, criminal, and background investigation by the authorized agents of the Tennessee Real Estate Commission before each license is approved. Office inspections will be made periodically to assure compliance with Chapter 663 of the Public Act of 1978.

Authority: *T.C.A. § 62-2501.* ***Administrative History.*** *Original rule filed November 14, 1978, effective December 29, 1978.*

1260-3-.04 REQUIREMENT OF CONTRACT OR RECEIPT. Every Rental Location Agent shall give to each customer who pays full or partial consideration for the services of the Agent a contract or receipt conforming to the requirements of Rule 1260-3-.05.

Authority: *T.C.A. § 62-2501.* ***Administrative History.*** *Original Rule filed November 14, 1978, effective December 29, 1978.*

1260-3-.05 TERMS OF CONTRACT OR RECEIPT.

(1) Every contract or receipt provided pursuant to Rule 1260-3-.04 shall contain the legends set forth in paragraphs (2), (3) and (4) hereof, and shall provide blanks for insertion of the information required by paragraph (5) hereof. The legends shall be set in boldface type of at least the greater of 10 points or the largest size type in the remainder of the contract or receipt. If the contract or receipt is not printed, the legends shall be in all capital letters, and no other part of the contract or receipt other than the name of the Rental Location Agent shall be in all capital letters.

(2) The contract or receipt shall include the following legend regarding the services to be provided to the customer:

NOTICE: THIS IS AN INFORMATION SERVICE ONLY. NO ATTEMPT IS MADE TO SECURE HOUSING FOR YOU. THE SERVICE OFFERS ONLY COMPILED INFORMATION CONCERNING AVAILABLE RENTAL HOUSING UNITS.

(3) The contract or receipt shall include the following legend regarding the services to be provided to the customer, with the blank filled in with the name of the Rental Location Agent.

A representative of ( ) must mark one of the following boxes after checking the current listings of rental property.

Rental property meeting your needs as described herein has been verified as available within the last 72 hours.

No property meeting your needs or described above can be verified as currently available.

(4) The contract or receipt shall include the following legend, with the blanks filled in with the correct names and addresses:

You are entitled to a refund of all but $10.00 if after a bonafide effort you fail to find a rental through our services. To qualify you must make contact either in person or by telephone with (name) at least once each day for at least 10 days, and attempt to contact each landlord whose telephone number is given to you as soon as possible. If you find a rental other than through (name) prior to the expiration of 10 days you will also receive the refund. To obtain your refund write to (name) stating

the amount owed and the address to which is to be sent. Letters should be mailed or delivered to:

(name)
(address)

Your refund will be mailed within 10 days of receipt.

(5) The contract or receipt shall provide spaces for insertion of at least the following specifications as to property sought by the customer.

(a) maximum rent per month

(b) number of bedrooms

(c) number of children

(d) pet

(e) general location

For purposes of subparagraph (e), the Rental Location Agent shall show to each customer a map dividing the area served by the Rental Location Agent into numbered districts not larger than zip code areas, and which may provide special districts relating to universities or colleges or other areas of high density population of renters. The number or numbers of districts acceptable to the customer shall be set forth in the space provided for "general location."

Authority: *T.C.A. § 62-2501.* ***Administrative History.*** *Original rule filed November 14, 1978, effective December 29, 1978.*

1260-3-.06 STANDARDS FOR ORAL OR WRITTEN REPRESENTATIONS OF AVAILABILITY.

(1) No rental housing shall be advertised in any medium unless its availability for rental has been verified by the Rental Location Agent on the day the request for advertising is made to the medium.

(2) The availability for rental of all advertised property shall be verified daily so long as the advertisements shall continue to be published. Upon learning that advertised property is no longer available, the Rental Location Agent shall immediately take all possible steps to cause cancellation of the advertisement. Persons who advise the Rental Location Agent by telephone or otherwise that they are responding to an advertisement for property which the Rental Location Agent knows is no longer available for rent shall be advised immediately that such property is not available. These provisions shall not prohibit the Rental Location Agent from advising such person of the existence of any other similar listed property which has been verified as to availability as required by paragraphs (1), (2) and (3) hereof.

(3) With respect to any property not being advertised, the Rental Location Agent shall not represent that it is available for rental unless availabil-

ity shall have been verified with 72 hours of the time at which a representation of availability is made. If such verification cannot be made within such time, the property shall be removed form the listings until it has been verified as available and no representation of availability shall be made by the Rental Location Agent.

(4) The following information shall be fully, accurately and clearly disclosed with respect to any property as to which a representation of availability is made:

(a) The date of availability for occupancy of the property if not currently available.

(b) The monthly rent.

(c) The existence (and the amount, if known) of any damage deposit, security deposit, clean-up fees, rent prepayment, or similar charges over and above the monthly rent.

(d) The number of bedrooms.

(e) Whether a lease is required.

(f) Restrictions on the property, such as no pets, except restrictions imposed by federal, state or local law.

(g) The types of housing, such as single family, duplex or trailer.

(h) The location of the rental housing by reference to the areas required to be established in accordance with Section 1260-3-.02 (5)(e) or otherwise.

(i) The utilities paid for, if any.

(j) The telephone number of the landlord.

Notwithstanding the foregoing, in the case of advertising, only the information in subparagraphs (a), (b) and (h) must be disclosed.

(5) No representation shall be made to any person that rental property meeting the needs of such person is contained in the Rental Location Agent's listings unless such is the fact and unless the availability of such property shall have been verified as required by paragraphs (1), (2) and (3) hereof as applicable.

(6) For purposes of this Rule 1260-3-.06, the term "Rental Location Agent" shall include the licensed Rental Location Agent and all employees and agents of such Rental Location Agent.

Authority: *T.C.A. § 62-2501.* ***Administrative History.*** *Original Rule filed November 14, 1978, effective December 29, 1978.*

TITLE 66

PROPERTY

CHAPTER 5

CONVEYANCES OF PROPERTY

PART 2—RESIDENTIAL PROPERTY DISCLOSURES

66-5-201. General provisions. — The provisions of this part apply only with respect to transfers by sale, exchange, installment land sales contract or lease with option to buy residential real property consisting of not less than one (1) nor more than four (4) dwelling units, including site-built and nonsite-built homes, whether or not the transaction is consummated with the assistance of a licensed real estate broker or salesperson. The disclosure statement referenced in § 66-5-202 is not a warranty of any kind by a seller and is not a substitute for inspections either by the individual purchasers or by a professional home inspector. The disclosure required by this part shall be provided to potential buyers for their exclusive use and may not be relied upon by purchasers in subsequent transfers from the original purchaser who received the property disclosure. The required disclosure shall be given in good faith by the owner or owners of property that is being transferred and shall be subject to the requirements of this part. [Acts 1994, ch. 828, § 1; 2000, ch. 771, § 1.]

Amendments. The 2000 amendment inserted "including site-built and nonsite-built homes," in the first sentence.

Effective Dates. Acts 2000, ch. 771, § 6. July 1, 2000.

Section to Section References. This section is referred to in §§ 62-13-405, 66-5-202.

Cited: Ganzevoort v. Russell, 949 S.W.2d 293 (Tenn. 1997); Russell v. Bray, — S.W.3d —, 2003 Tenn. App. LEXIS 438 (Tenn. Ct. App. Apr. 4, 2003).

NOTES TO DECISIONS

1. Tolling of Statute of Limitations.

Insofar as the buyers' claims under the Tennessee Residential Property Disclosures Act, T.C.A. § 66-5-201 et seq., related to the buyers' claim of fraudulent concealment against the sellers, the trial court's grant of summary judgment in favor of the sellers on statute of limitations grounds was reversed, as the applicable statute of limitations was tolled by the sellers' alleged fraudulent concealment of termite damage to the home it sold to the buyers. Patel v. Bayliff, — S.W.3d —, 2003 Tenn. App. LEXIS 207 (Tenn. Ct. App. Mar. 12, 2003).

66-5-202. Required disclosures or disclaimers. — With regard to transfers described in § 66-5-201, the owner of the residential property shall furnish to a purchaser one of the following:

(1) A residential property disclosure statement in the form provided in this part regarding the condition of the property, including any material defects known to the owner. Such disclosure form may be as included in this part and must include all items listed on the disclosure form required pursuant to this part. The disclosure form shall contain a notice to prospective purchasers and owners that the prospective purchaser and the owner may wish to obtain professional advice or inspections of the property. The disclosure form shall also contain a notice to purchasers that the information contained in the disclosure are the representations of the owner and are not the representations of the real estate licensee or sales person, if any. The owner shall not be required to undertake or provide any independent investigation or inspection of the property in order to make the disclosures required by this part; or

(2) A residential property disclaimer statement stating that the owner makes no representations or warranties as to the condition of the real property or any improvements thereon and that purchaser will be receiving the real property "as is," that is, with all defects which may exist, if any, except as otherwise provided in the real estate purchase contract. A disclaimer statement may only be permitted where the purchaser waives the required disclosure under subdivision (1). If the purchaser does not waive the required disclosure under this part, the disclosure statement described in subdivision (1) shall be provided in accordance with the requirements of this part. [Acts 1994, ch. 828, § 2.]

Section to Section References. This section is referred to in § 66-5-201.

66-5-203. Delivery of disclosure or disclaimer statement. — (a) The owner of residential real property subject to this part shall deliver to the purchaser the written disclosure or disclaimer statement, if agreed upon by the purchaser required by this part prior to the acceptance of a real estate purchase contract. For purposes of this part, a "real estate purchase contract" means a contract for the sale, exchange or lease with option to buy of real estate subject to this part, and "acceptance" means the full execution of a real estate purchase contract by all parties. The residential property disclaimer statement or residential property disclosure statement may be included in the real estate purchase contract, in an addendum thereto, or in a separate document.

(b) Failure to provide the disclosure or disclaimer statement required by this part shall not permit a purchaser to terminate a real estate purchase contract; however, a purchaser shall not be restricted by this part from bringing such other actions at law or in equity that are otherwise permitted. [Acts 1994, ch. 828, § 3.]

66-5-204. Liability for errors or omissions — Experts' reports. — (a) The owner shall not be liable for any error, inaccuracy or omission of any information delivered pursuant to this part if:

(1) The error, inaccuracy or omission was not within the actual knowledge of the owner or was based upon information provided by public agencies or by other persons providing information as specified in subsection (b) that is required to be disclosed pursuant to this part, or the owner reasonably believed the information to be correct; and

(2) The owner was not grossly negligent in obtaining the information from a third party and transmitting it.

(b) The delivery by a public agency or other person, as described in subsection (c), of any information required to be disclosed by this part to a prospective purchaser shall be deemed to comply with the requirements of this part, and shall relieve the owner of any further duty under this part with respect to that item of information.

(c) The delivery by the owner of a report or opinion prepared by a licensed engineer, land surveyor, geologist, wood destroying insect control expert, contract or other home inspection expert, dealing with matters within the scope of the professional license or expertise, shall satisfy the requirements of subsection (a) if the information is provided to the owner pursuant to request therefor, whether written or oral. In responding to such a request, an expert may indicate, in writing, an understanding that the information provided will be used in fulfilling the requirements of this part and, if so, shall indicate the required disclosure or portions thereof, to which the information being furnished is applicable. Where such a statement is furnished, the expert shall not be responsible for any items of information, or portions thereof, other than those expressly set forth in this statement. [Acts 1994, ch. 828, § 4.]

Section to Section References. This section is referred to in § 66-5-208.

66-5-205. Liability for changed circumstances. — If information disclosed in accordance with this part is subsequently rendered or discovered to be inaccurate as a result of any act, occurrence, information received, circumstance or agreement subsequent to the delivery of the required disclosures, the inaccuracy resulting therefrom does not constitute a violation of this part. However, at or before closing, the owner shall be required to disclose any material change in the physical condition of the property or certify to the purchaser at closing that the condition of the property is substantially the same as it was when the disclosure form was provided. If, at the time the disclosures are required to be made, an item of information required to be disclosed is unknown or not available to the owner, the owner may state that the information is unknown or may use an approximation of the information; provided, that the approximation is clearly identified as such, is reasonable, is based on the actual knowledge of the owner and is not used for the purpose of circumventing or evading this part. [Acts 1994, ch. 828, § 5.]

66-5-206. Duties of real estate licensees. — A real estate licensee representing an owner of residential real property as the listing broker has a duty to inform each such owner represented by that licensee of the owner's rights and obligations under this part. A real estate licensee representing a purchaser of residential real property or, if the purchaser is not represented by

a licensee, the real estate licensee representing an owner of residential real estate and dealing with the purchaser has a duty to inform each such purchaser of the purchaser's rights and obligations under this part. If a real estate licensee performs those duties, the licensee shall have no further duties to the parties to a residential real estate transaction under this part, and shall not be liable to any party to a residential real estate transaction for a violation of this part or for any failure to disclose any information regarding any real property subject to this part. However, a cause of action for damages or equitable remedies may be brought against a real estate licensee for intentionally misrepresenting or defrauding a purchaser. A real estate licensee will further be subject to a cause of action for damages or equitable relief for failing to disclose adverse facts of which the licensee has actual knowledge or notice. "Adverse facts" means conditions or occurrences generally recognized by competent licensees that significantly reduce the structural integrity of improvements to real property, or present a significant health risk to occupants of the property. [Acts 1994, ch. 828, § 6.]

Section to Section References. This section is referred to in § 66-5-208.

66-5-207. Liability for nondisclosure of communicable diseases or criminal acts on property. — Notwithstanding any of the provisions of this part, or any other statute or regulation, no cause of action shall arise against an owner or a real estate licensee for failure to disclose that an occupant of the subject real property, whether or not such real property is subject to this part, was afflicted with human immunodeficiency virus (HIV) or other disease which has been determined by medical evidence to be highly unlikely to be transmitted through the occupancy of a dwelling place, or that the real property was the site of:

(1) An act or occurrence which had no effect on the physical structure of the real property, its physical environment or the improvements located thereon; or

(2) A homicide, felony or suicide. [Acts 1994, ch. 828, § 7.]

66-5-208. Remedies for misrepresentation or nondisclosure. — (a) The purchaser's remedies hereunder for an owner's misrepresentation on a residential property disclosure statement shall be either:

(1) An action for actual damages suffered as a result of defects existing in the property as of the date of execution of the real estate purchase contract; provided, that the owner has actually presented to a purchaser the disclosure statement required by this part, and of which the purchaser was not aware at the earlier of closing or occupancy by the purchaser, in the event of a sale, or occupancy in the event of a lease with the option to purchase. Any action brought under this subsection (a) shall be commenced within one (1) year from the date the purchaser received the disclosure statement or the date of closing (or occupancy if a lease situation), whichever occurs first;

(2) In the event of a misrepresentation in any residential property disclosure statement required by this part, termination of the contract prior to closing, subject to the provisions of § 66-5-204; or

(3) Such other remedies at law or equity otherwise available against an owner in the event of an owner's intentional or willful misrepresentation of the condition of the subject property.

(b) No cause of action may be instituted against an owner of residential real property subject to this part for the owner's failure to provide the disclosure or disclaimer statement required by this part. However, such owner would be subject to any other cause of action available in law or equity against an owner for misrepresentation or failure to disclose material facts regarding the subject property that exists on July 1, 1994.

(c) No cause of action may be instituted against a closing agent or closing attorney for the failure of an owner to provide the disclaimer or disclosure required by this part or for any misrepresentations made by a seller on the disclosure form supplied to the purchaser pursuant to this part.

(d)(1) No cause of action may be instituted against a real estate licensee for information contained in any reports or opinions prepared by an engineer, land surveyor, geologist, wood destroying inspection control expert, termite inspector, mortgage broker, home inspector, or other home inspection expert. A real estate licensee may not be the subject of any action and no action may be instituted against a real estate licensee for any information contained in the form prescribed by § 66-5-210, unless the real estate licensee is signatory to such.

(2) Nothing in this subsection (d) shall be construed to exempt or excuse a real estate licensee from making any of the disclosures required by § 66-5-206, § 62-13-403 or § 62-13-405, nor shall it be construed to remove, limit or otherwise affect any remedy provided by law for such a failure to disclose.

(e) The failure of an owner to provide a purchaser the disclosure or disclaimer required by this part shall not have any effect on title to property subject to this part and the presence or absence of such disclosure or disclaimer is not a cloud on title and has no effect on title to such property. [Acts 1994, ch. 828, § 8; 2003, ch. 263, § 1.]

Amendments. The 2003 amendment inserted present (d) and redesignated former (d) as (e).

Effective Dates. Acts 2003, ch. 263, § 2. June 4, 2003.

66-5-209. Exempt property transfers. — The following are specifically excluded from the provisions of this part:

(1) Transfers pursuant to court order including, but not limited to, transfers ordered by a court in the administration of an estate, transfers pursuant to a writ of execution, transfers by foreclosure sale, transfers by a trustee in bankruptcy, transfers by eminent domain and transfers resulting from a decree of specific performance;

(2) Transfers to a beneficiary of a deed of trust by a trustor or successor in interest who is in default; transfers by a trustee under a deed of trust pursuant to a foreclosure sale, or transfers by a beneficiary under a deed of trust who has acquired the real property at a sale conducted pursuant to a foreclosure sale under a deed of trust or has acquired the real property by a deed in lieu of foreclosure;

(3) Transfers by a fiduciary in the course of the administration of a decedent's estate, guardianship, conservatorship or trust;

(4) Transfers from one (1) or more co-owners solely to one (1) or more co-owners. This provision is intended to apply and only does apply in situations where ownership is by a tenancy by the entirety, a joint tenancy or a tenancy in common and the transfer will be made from one (1) or more of the owners to another owner or co-owners holding property either as a joint tenancy, tenancy in common or tenancy by the entirety;

(5) Transfers made solely to any combination of a spouse or a person or persons in the lineal line of consanguinity of one (1) or more of the transferors;

(6) Transfers between spouses resulting from a decree of divorce or a property settlement stipulation;

(7) Transfers made by virtue of the record owner's failure to pay any federal, state or local taxes;

(8) Transfers to or from any governmental entity of public or quasi-public housing authority or agency;

(9) Transfers involving the first sale of a dwelling provided that the builder offers a written warranty;

(10) Any property sold at public auction;

(11) Any transfer of property where the owner has not resided on the property at any time within three (3) years prior to the date of transfer; and

(12) Any transfer from a debtor in a chapter 7 or a chapter 13 bankruptcy to a creditor or third party by a deed in lieu of foreclosure or by a quitclaim deed. [Acts 1994, ch. 828, § 9; 2000, ch. 771, §§ 2-4.]

Amendments. The 2000 amendment added (12).

Effective Dates. Acts 2000, ch. 771, § 6. July 1, 2000.

66-5-210. Disclosure form. — Following is the form prescribed by the general assembly which is necessary to comply with the provisions of this part. The form used does not have to be the one included in this section, but it is the intent of the general assembly that any such form includes all items contained in the form below with all acknowledgement provisions of such form:

Tennessee Residential Property Condition Disclosure

The Tennessee Residential Property Disclosure Act states that anyone transferring title to residential real property must provide information about the condition of the property. This completed form constitutes that disclosure by the seller. This is not a warranty, or a substitute for any professional inspections or warranties that the purchasers may wish to obtain. **Buyers and sellers should be aware that any sales agreement executed between the parties will supersede this form as to any obligations on the part of the seller to repair items identified below and/or the obligation of the buyer to accept such items "as is."**

Instructions to the Seller:

Complete this form yourself and answer each question to the best of your knowledge. If an answer is an estimate, clearly label it as such. The seller hereby authorizes any agent representing any party in this transaction to

provide a copy of this statement to any person or entity in connection with any actual or anticipated sale of the subject property.

Property Address _____

City _____

Seller's Name(s) _____

Property Age _____

Date Seller Acquired the Property _____

Do You Occupy the Property? _____

If Not Owner-Occupied, How Long Has It Been Since the Seller Occupied the Property? _____

The property is a

_____ site-built home

_____ nonsite built-home

(Check the one that applies)

A. The Subject Property Includes the Items Checked Below:

_____ Range
_____ Oven
_____ Microwave
_____ Dishwasher
_____ Garbage Disposal
_____ Trash Compactor
_____ Water Softener
_____ 220 Volt Wiring
_____ Washer/Dryer Hookups
_____ Central Heating
_____ Heat Pump
_____ Central Air Conditioning
_____ Wall/Window Air Conditioning
_____ Window Screens
_____ Rain Gutters
_____ Fireplace(s) (Number)
_____ Gas Starter for Fireplace
_____ Smoke Detector/Fire Alarm
_____ Burglar Alarm
_____ Patio/Decking/Gazebo
_____ Irrigation System
_____ Sump Pump
_____ Garage Door Opener(s) (Number of openers ____)
_____ Intercom
_____ TV Antenna/Satellite Dish
_____ Pool
_____ Spa/Whirlpool Tub
_____ Hot Tub
_____ Sauna
_____ Current Termite Contract
_____ Access to Public Streets
_____ Other _____
_____ Other _____

Garage: ____ Attached ____ Not Attached ____ Carport
Water Heater: ____ Gas ____ Solar ____ Electric
Water Supply: ____ City ____ Well ____ Private ____ Utility ____ Other
Waste Disposal: ____ City Sewer ____ Septic Tank ____ Other
Gas Supply: ____ Utility ____ Bottled ____ Other
Roof(s): Type _____ Age (approx.) _____
Other Items: _____
To the best of your knowledge, are any of the above NOT in operating condition?
_____ YES _____ NO
If YES, then describe (attach additional sheets if necessary): _____

B. Are You (Seller) Aware of Any Defects/Malfunctions in Any of the Following?

Interior Walls	YES	NO	UNKNOWN
Ceilings	YES	NO	UNKNOWN
Floors	YES	NO	UNKNOWN
Windows	YES	NO	UNKNOWN
Doors	YES	NO	UNKNOWN
Insulation	YES	NO	UNKNOWN
Plumbing	YES	NO	UNKNOWN
Sewer/Septic	YES	NO	UNKNOWN
Electrical System	YES	NO	UNKNOWN
Exterior Walls	YES	NO	UNKNOWN
Roof	YES	NO	UNKNOWN
Basement	YES	NO	UNKNOWN
Foundation	YES	NO	UNKNOWN
Slab	YES	NO	UNKNOWN
Driveway	YES	NO	UNKNOWN
Sidewalks	YES	NO	UNKNOWN
Central heating	YES	NO	UNKNOWN
Heat pump	YES	NO	UNKNOWN
Central air conditioning	YES	NO	UNKNOWN

If any of the above is/are marked YES, please explain: _____

C. Are You (Seller) Aware of Any of the Following?

1. Substances, materials or products which may be an environmental hazard such as, but not limited to: asbestos, radon gas, lead-based paint, fuel or chemical storage tanks and/or contaminated soil or water on the subject property?

YES NO UNKNOWN

2. Features shared in common with adjoining land owners, such as walls, but not limited to, fences, and/or driveways, with joint rights and obligations for use and maintenance?

YES NO UNKNOWN

3. Any authorized changes in roads, drainage or utilities affecting the property, or contiguous to the property?

YES NO UNKNOWN

4. Any changes since the most recent survey of the property was done?
YES NO UNKNOWN
Most recent survey of the property: _____ (check here if unknown.) ____
5. Any encroachments, easements, or similar items that may affect your ownership interest in the property?
YES NO UNKNOWN
6. Room additions, structural modifications or other alterations or repairs made without necessary permits?
YES NO UNKNOWN
7. Room additions, structural modifications or other alterations or repairs not in compliance with building codes?
YES NO UNKNOWN
8. Landfill (compacted or otherwise) on the property or any portion thereof?
YES NO UNKNOWN
9. Any settling from any cause, or slippage, sliding or other soil problems?
YES NO UNKNOWN
10. Flooding, drainage or grading problems?
YES NO UNKNOWN
11. Any requirement that flood insurance be maintained on the property?
YES NO UNKNOWN
12. Property or structural damage from fire, earthquake, floods or landslides?
YES NO UNKNOWN
If yes, has such damage been repaired? _____
13. Any zoning violations, nonconforming uses and/or violations of "setback" requirements?
YES NO UNKNOWN
14. Neighborhood noise problems or other nuisances?
YES NO UNKNOWN
15. Subdivision and/or deed restrictions or obligations?
YES NO UNKNOWN
16. A Homeowners Association (HOA) which has any authority over the subject property?
YES NO UNKNOWN
Name of HOA: _____
HOA Address: _____
Monthly Dues: _____ Special Assessments: _____
17. Any "common area" (facilities such as, but not limited to, pools, tennis courts, walkways, or other areas co-owned in undivided interest with others)?
YES NO UNKNOWN
18. Any notices of abatement or citations against the property?
YES NO UNKNOWN
19. Any lawsuits or proposed lawsuits by or against the seller which affects or will affect the property?
YES NO UNKNOWN

20. Is any system, equipment or part of the property being leased?

YES NO UNKNOWN

If yes, please explain, and include a written statement regarding payment information. _____

21. Any exterior wall covering of the structures covered with exterior insulation and finish systems (EIFS), also known as "synthetic stucco"?

YES NO UNKNOWN

If yes, has there been a recent inspection to determine whether the structure has excessive moisture accumulation and/or moisture related damage? (The Tennessee Real Estate Commission urges any buyer or seller who encounters this product to have a qualified professional inspect the structure in question for the preceding concern and provide a written report of the professional's finding.)

YES NO UNKNOWN

If yes, please explain. If necessary, please attach an additional sheet. ___

_____

D. Certification: I/we certify that the information herein, concerning the real property located at _____ , is true and correct to the best of my/our knowledge as of the date signed. Should any of these conditions change prior to conveyance of title to this property, these changes will be disclosed in addendum to this document.

_____ _____

Transferor (Seller) Date

_____ _____

Transferor (Seller) Date

Parties may wish to obtain professional advice and/or inspections of the property and to negotiate appropriate provisions in the purchase agreement regarding advice, inspections or defects.

Transferee/Buyer's Acknowledgement:

I/we understand that this disclosure statement is not intended as a substitute for any inspection, and that I/we have a responsibility to pay diligent attention to and inquire about those material defects which are evident by careful observation.

I/we acknowledge receipt of a copy of this disclosure.

_____ _____

Transferee (Buyer) Date

_____ _____

Transferee (Buyer) Date

[Acts 1994, ch. 828, § 10; 1998, ch. 727, § 1; 2000, ch. 771, § 5.]

Amendments. The 2000 amendment added "The property is a

_____ site-built home

_____ nonsite built-home

(Check the one that applies)"

preceding "A. The Subject Property Includes the Items Checked Below."

Effective Dates. Acts 2000, ch. 771, § 6. July 1, 2000.

Section to Section References. This section is referred to in § 66-5-208.

Law Reviews. The Hazards of Taxing Contaminated Properties: Owners Beware! (Darlene Marsh, Byron Taylor and Andy

Raines), 37 No. 5 Tenn. B.J. 21 (2001). Russell v. Bray, — S.W.3d —, 2003 Tenn. App. LEXIS 438 (Tenn. Ct. App. Apr. 4, 2003).

Collateral References. Landlord's liability for injury or death of tenant's child from lead paint poisoning. 19 A.L.R.5th 405.

CHAPTER 32

TIME-SHARE PROGRAMS AND VACATION CLUBS

SECTION.

PART 1—TIME-SHARE PROGRAMS

66-32-101. Short title. — This part shall be known and may be cited as the

"Tennessee Time-Share Act of 1981." [Acts 1981, ch. 372, §§ 1, 35; T.C.A., § 64-3201; Acts 1983, ch. 210, § 1.]

Cross-References. Membership camping, title 47, ch. 18, part 4.

Section to Section References. This part is referred to in §§ 47-18-120, 47-18-124, 62-13-102, 62-13-303, 62-13-304, 62-13-312, 66-32-309.

Textbooks. Tennessee Jurisprudence, 6 Tenn. Juris., Condominiums, § 1.

Law Reviews. Comment, An Overview of Time-Sharing and the Tennessee Time-Share Act: Are Purchasers Now Protected?, 53 Tenn. L. Rev. 779 (1986).

Comparative Legislation. Time-sharing:
Ala. Code § 34-27-50 et seq.
Ark. Code § 18-14-101 et seq.
Ga. O.C.G.A. § 44-3-160 et seq.
Mo. Rev. Stat. § 448.4-105.
N.C. Gen. Stat. § 93A-41 et seq.
Va. Code § 55-360 et seq.

Cited: Skinner v. Steele, 730 S.W.2d 335 (Tenn. Ct. App. 1987).

NOTES TO DECISIONS

Analysis

1. Legislative intent.
2. Standing.

1. Legislative Intent.

The overriding purpose of this chapter is to protect consumers. State v. Heath, 806 S.W.2d 535 (Tenn. Ct. App. 1990).

2. Standing.

Where the attorney general is clothed with authority to bring an action under the Tennessee Consumer Protection Act of 1977 (title 47, ch. 18, part 1) and this part, the attorney general's standing does not depend on the outcome of the claims. State v. Heath, 806 S.W.2d 535 (Tenn. Ct. App. 1990).

Participation in action was well within the attorney general's discretion where underlying financing on time-share units contained no protection for non-defaulting purchasers and where such omission could cause many consumers to lose money invested in time-shares. The attorney general's standing under the Tennessee Consumer Protection Act of 1977 arose from § 47-18-114 and standing under this part arose under the attorney general's broad statutory and common law powers. State v. Heath, 806 S.W.2d 535 (Tenn. Ct. App. 1990).

Collateral References. Am. Jur. 2d New Topic Service, Real Estate Time-Sharing § 1 et seq.

Regulation of time-share or interval ownership interests in real estate. 6 A.L.R.4th 1288.

66-32-102. Definitions. — As used in this part and part 2 of this chapter, unless the context otherwise requires:

(1) "Acquisition agent" means a person who by means of telephone, mail, advertisement, inducement, solicitation or otherwise attempts directly to encourage any person to attend a sales presentation for a time-share program;

(2) "Advertise" or "advertisement" means any written, printed, verbal or visual offer by an individual or general solicitation;

(3) "Commission" means Tennessee real estate commission, which is an agency created under § 62-13-201;

(4) "Developer" means, in the case of any given property, any person or entity which is in the business of creating or which is in the business of selling its own time-share intervals in any time-share program. This definition does not include a person acting solely as a sales agent;

(5) "Development," "project," or "property" means all of the real property subject to a project instrument, and containing more than one (1) unit;

(6) "Exchange agent" means a person who exchanges or offers to exchange time-share intervals in an exchange program with other time-share intervals;

(7) "Managing agent" means a person who undertakes the duties, responsibilities, and obligations of the management of a time-sharing program;

(8) "Offering" means any offer to sell, solicitation, inducement or advertisement whether by radio, television, newspaper, magazine or by mail, whereby a person is given an opportunity to acquire a time-share interval within a project located either within or outside the state of Tennessee. Any offering of a time-share interval which is not located in this state shall not be an offering if the developer shall submit appropriate documentation satisfactory to the commission that the time-share program is in compliance with the law of the jurisdiction in which the time-share interval is located and such law is as stringent as this part;

(9) "Person" means one (1) or more natural persons, corporations, partnerships, associations, trusts, other entities, or any combination thereof;

(10) "Project" — See "Development";

(11) "Project instrument" means one (1) or more recordable documents applicable to the whole project by whatever name denominated, containing restrictions or covenants regulating the use, occupancy or disposition of an entire project, including any amendments to the document, but excluding any law, ordinance, or governmental regulation;

(12) "Property" — See "Development";

(13) "Public offering statement" means that statement required by § 66-32-112;

(14) "Purchaser" means any person other than a developer or lender who acquires an interest in a time-share interval;

(15) "Sales agent" means a person who sells or offers to sell "time-share intervals" in a "time-share program" to a purchaser. All such sales agents shall be licensed and subject to the provisions of title 62, chapter 13;

(16) "Time-share estate" means an ownership or leasehold estate in property devoted to a time-share fee (tenants in common, time span ownership, interval ownership) and a time-share lease;

(17) "Time-share instrument" means any document by whatever name denominated, creating or regulating time-share programs, but excluding any law, ordinance or governmental regulation;

(18) "Time-share interval" means a time-share estate or a time-share use;

(19) "Time-share program" means any arrangement for time-share intervals in a time-share project whereby use, occupancy or possession of real property has been made subject to either a time-share estate or time-share use whereby such use, occupancy or possession circulates among purchasers of the time-share intervals according to a fixed or floating time schedule on a periodic basis occurring annually over any period of time in excess of one (1) year;

(20) "Time-share project" means any real property that is subject to a time-share program;

(21) "Time-share resale broker" means any person or entity who undertakes to list, advertise for sale, promote or sell by any means whatsoever more than five (5) time-share intervals per year in one (1) or more time-share projects on behalf of any number of purchasers. A time-share resale broker must be a licensed real estate broker, as defined in § 62-13-102. "Time-share resale broker" does not include:

(A) Any person who has acquired any number of time-share intervals in any number of time-share projects for personal use and occupancy;

(B) Any resale performed by a time-share resale broker affiliated with a duly registered time-share developer, involving time-share intervals under the control of the time-share developer in its project; provided, that the time-share developer is in compliance with § 66-32-137(d); or

(C) A publisher of a newspaper or periodical in general circulation, broadcaster or telecaster in connection with the advertising for resale or other promotion of one (1) or more time-share intervals, so long as the publisher, broadcaster or telecaster is not under common ownership or control with a person required to be licensed by this part or chapter 13 of this title or does not have as its primary purpose the solicitation of resales or other uses of time-share intervals;

(22) "Time-share use" means any contractual right of exclusive occupancy which does not fall within the definition of a "time-share estate" including, without limitation, a vacation license, prepaid hotel reservation, club membership, vacation club interest, limited partnership or vacation bond;

(23) "Unit" means the real property or real property improvement in a project which is derived into time-share intervals;

(24) "Component site" means a specific geographic site at which certain time-share accommodations and facilities are located. If permitted under applicable law, separate phases that are operated as a single development in a particular geographic location and under common management shall be deemed a single component site;

(25) "Reservation system" means the method, arrangement, or procedure by which the owners of vacation club interests are required to compete with other owners of vacation club interests in the same vacation club in order to reserve the use and occupancy of an accommodation of the vacation club for one or more use periods, regardless of whether such reservation system is operated and maintained by the vacation club managing entity, an exchange company, or any other person. In the event that mandatory use of an exchange program is an owner's principal means of obtaining the right to use and occupy a vacation club's accommodations, such arrangement shall be deemed a reservation system for purposes of this subdivision and part 2 of this chapter;

(26) "Vacation club" means any system or program with respect to which a purchaser obtains, by any means, a recurring right to use and occupy accommodations and facilities, if any, in more than one (1) component site through the mandatory use of a reservation system, whether or not the purchaser's use and occupancy right is coupled with an interest in real property; and

(27) "Vacation club documents" means and includes the one (1) or more documents or instruments, by whatever name denominated, creating or governing a vacation club and the disposition of vacation club interests therein. "Vacation club documents" is intended to be broadly construed to incorporate all terms and conditions of the purchase of a vacation club interest, the incorporation of accommodations and facilities located at component sites into the vacation club, the management and operation of the vacation club's component sites, and the management and operation of the reservation

system, including, but not limited to, the reservation system's rules and regulations. [Acts 1981, ch. 372, § 2; T.C.A., § 64-3202; Acts 1983, ch. 210, § 2; 1985, ch. 98, § 1; 1990, ch. 672, § 2; 1995, ch. 90, §§ 5, 7.]

Section to Section References. This section is referred to in §§ 6-53-102, 66-32-139.

Law Reviews. Selected Tennessee Legislation of 1983 (N. L. Resener, J. A. Whitson, K. J. Miller), 50 Tenn. L. Rev. 785 (1983).

Attorney General Opinions. Constitutionality, OAG 90-80 (8/20/90).

66-32-103. Nature of time-share estates — Recordation. — (a) A "time-share estate" is an estate in real property and has the character and incidents of an estate in fee simple at common law or estate for years, if a leasehold, except as expressly modified by this part. The foregoing shall supersede any contrary rule at common law.

(b) Each time-share estate constitutes for purposes of title a separate estate or interest in property except for real property tax purposes.

(c) A document transferring or encumbering a time-share estate in real property may not be rejected for recordation because of the nature or duration of that estate or interest. [Acts 1981, ch. 372, §§ 3, 4; T.C.A., §§ 64-3203, 64-3204.]

66-32-104. Applicability of local ordinances, regulations, and building codes. — A zoning, subdivision, or other ordinance or regulation may not discriminate against the creation of time-share intervals or impose any requirement upon a time-share program which it would not impose upon a similar development under a different form of ownership. [Acts 1981, ch. 372, § 5; T.C.A., § 64-3205.]

66-32-105. Time-share units. — A time-share program may be created in any unit, unless expressly prohibited by the project instruments or local governing laws. [Acts 1981, ch. 372, § 6; T.C.A., § 64-3206.]

66-32-106. Instruments for time-share estates. — Project instruments and time-share instruments creating time-share estates must contain the following:

(1) The name of the county in which the property is situated;

(2) The legal description, street address or other description sufficient to identify the property;

(3) Identification of time periods by letter, name, number, or combination thereof;

(4) Identification of time-share estates and, where applicable, the method whereby additional time-share estates may be created;

(5) The formula, fraction or percentage, of the common expenses and any voting rights assigned to each time-share estate and, where applicable, to each unit in a project that is not subject to the time-share program;

(6) Any restrictions on the use, occupancy, alteration or alienation of time-share intervals;

(7) The ownership interest, if any, in personal property and provisions for the care, maintenance and replacement of the commonly owned capital

improvements and the commonly owned personal property belonging to the time-share estates. Specifically, an escrow or reserve account shall be established for the repair, replacement and maintenance of capital improvements and personal property; and

(8) Any other matters the developer deems appropriate. [Acts 1981, ch. 372, § 7; T.C.A., § 64-3207; Acts 1989, ch. 65, § 1.]

66-32-107. Time-share estate management. — The time-share instruments for a time-share estate program shall prescribe reasonable arrangements for management and operation of the time-share program and for the maintenance, repair and furnishing of units, which shall ordinarily include, but need not be limited to, provisions for the following:

(1) Creation of an association of time-share estate owners;

(2) Adoption of bylaws for organizing and operating the association;

(3) Payment of costs and expenses of operating the time-share program and owning and maintaining the units;

(4) Employment and termination of employment of the managing agent for the association;

(5) Preparation and dissemination to owners of an annual budget and of operating statements and other financial information concerning the time-share program;

(6) Adoption of standards and rules of conduct for the use and occupancy of units by owners;

(7)(A) Collection of assessments from owners to defray the expenses of management of the time-share program and maintenance of the units, which will include the maintenance of reserve and escrow accounts that will adequately provide for the maintenance and replacement of capital improvements to the commonly owned areas of the time-sharing program and for the timely maintenance and replacement of the personal property commonly owned by the time-share estates;

(B) The board of directors of the property owners association shall decide when maintenance or replacement of capital improvements shall be accomplished and shall set amounts of reserve. The board of directors of the property owners' association and managing agent shall disclose to each interval owner, in a written annual report, the status of the required accounts. The report shall include the total funds deposited, the current balance, the interest earned, the purpose and amount of any payouts since the previous report. The report shall include the name and address of the person(s) in responsible charge of the accounts;

(8) Comprehensive general liability insurance for death, bodily injury and property damage arising out of, or in connection with, the use of units by owners, their guests and other users;

(9) Methods for providing compensation use periods or monetary compensation to an owner if a unit cannot be made available for the period to which the owner is entitled by schedule or by confirmed reservation;

(10) Procedures for imposing a monetary penalty or suspension of an owner's rights and privileges in the time-share program for failure of the owner to comply with provisions of the time-share instruments or the rules of

the association with respect to the use of the units. Under these procedures an owner must be given notice and the opportunity to refute or explain the charges against such owner in person or in writing to the governing body of the association before a decision to impose discipline is rendered;

(11) Employment of attorneys, accountants and other professional persons as necessary to assist in the management of the time-share program and the units;

(12) The managing agent for the association shall be responsible for the maintenance of an escrow or reserve account, as set by the board of directors, which shall contain the assessments collected for the maintenance and replacement of the capital improvements to the commonly owned areas and for the maintenance and timely replacement of the personal property commonly owned by the time-share estates. Such escrow or reserve accounts shall be maintained in an institution insured by the federal deposit insurance corporation or the federal savings and loan insurance corporation or federally insured agencies;

(13) Failure of the managing agent to properly maintain the escrow or reserve accounts, as set by the board of directors, for maintenance and replacement of capital improvements to the common area and the maintenance and timely replacement of the personal property shall constitute a felony and the managing agent shall be subject to the penalties as provided in § 66-32-118; and

(14) The managing agent shall be a licensed real estate firm or bonded agent. The principal broker/agent of the firm shall have control of the accounts required in subdivision (12), and shall enter into a tri-party agreement by and between the commission, the managing agent, and the depository institution, providing for the authority of the commission to access and inspect the account records at all times on behalf of the condominium homeowners' association. [Acts 1981, ch. 372, § 8; T.C.A., § 64-3208; Acts 1989, ch. 65, §§ 2, 3.]

66-32-108. Developer control. — (a) The time-share instruments for a time-share estate program may provide for a period of time, hereafter referred to as "developer control period," during which the developer or a managing agent selected by the developer may manage the time-share program and the units in the time-share program.

(b) If the time-share instruments for a time-share estate program provide for the establishment of a developer control period, they shall ordinarily include provisions for the following:

(1) Termination of the developer control period by action of the association;

(2) Termination of contracts for goods and services for the time-share program or for units in the time-share program entered into during the developer control period; and

(3) A regular accounting by the developer to the association as to all matters that significantly affect the interests of owners in the time-share program. [Acts 1981, ch. 372, § 9; T.C.A., § 64-3209.]

66-32-109. Instruments for time-share use. — Project instruments and time-share instruments creating time-share uses must contain the following:

(1) Identification by name of the time-share project and street address where the time-share project is situated;

(2) Identification of the time periods, type of units and the units that are in the time-share program and the length of time that the units are committed to the time-share program;

(3) In case of a time-share project, identification of which units are in the time-share program and the method whereby any other units may be added, deleted or substituted; and

(4) Any other matters that the developer deems appropriate. [Acts 1981, ch. 372, § 10; T.C.A., § 64-3210.]

66-32-110. Time-share use management. — The time-share instruments for a time-share use program shall prescribe reasonable arrangements for management and operation of the time-share program and for the maintenance, repair and furnishing of units which shall ordinarily include, but need not be limited to, provisions for the following:

(1) Standards and procedures for upkeep, repair and interior furnishings of units and for providing maid, cleaning, linen and similar services to the units during use periods;

(2) Adoption of standards and rules of conduct governing the use and occupancy of units by owners;

(3) Payment of the costs and expenses of operating the time-share program and owning and maintaining the units;

(4) Selection of a managing agent to act on behalf of the developer;

(5) Preparation and dissemination to owners of an annual budget and of operating statements and other financial information concerning the time-share program;

(6) Procedures for establishing the rights of owners to the use of units by prearrangement or under a first-reserved first-served priority system;

(7) Organization of a management advisory board consisting of time-share use owners including an enumeration of rights and responsibilities of the board;

(8) Procedures for imposing and collecting assessments or use fees from time-share use owners as necessary to defray costs of management of the time-share program and in providing materials and services to the units;

(9) Comprehensive general liability insurance for death, bodily injury and property damage arising out of, or in connection with, the use of units by time-share use owners, their guests and other users;

(10) Methods for providing compensating use periods or monetary compensation to an owner if a unit cannot be made available for the period to which the owner is entitled by schedule or a confirmed reservation;

(11) Procedures for imposing a monetary penalty or suspension of an owner's rights and privileges in the time-share program for failure of the owner to comply with the provisions of the time-share instruments or the rules established by the developer with respect to the use of the units. The owners shall be given notice and the opportunity to refute or explain the charges in person or in writing to the management advisory board before a decision to impose discipline is rendered; and

(12) Annual dissemination to all time-share use owners by the developer, or by the managing agent, of a list of the name and mailing addresses of all current time-share use owners in the time-share program. [Acts 1981, ch. 372, § 11; T.C.A., § 64-3211.]

66-32-111. Partition. — No action for partition of a unit may be maintained except as permitted by the time-share instrument. [Acts 1981, ch. 372, § 12; T.C.A., § 64-3212.]

66-32-112. Public offering statement — General provisions. — A public offering statement must be provided to each purchaser of a time-share interval and must contain or fully and accurately disclose:

(1) The name of the developer and the principal address of the developer and the time-share intervals offered in the statement;

(2) A general description of the units including, without limitation, the developer's schedule of commencement and completion of all buildings, units, and amenities or if completed that they have been completed;

(3) As to all units offered by the developer in the same time-share project:

(A) The types and number of units;

(B) Identification of units that are subject to time-share intervals;

(C) The estimated number of units that may become subject to time-share intervals;

(4) A brief description of the project;

(5) If applicable, any current budget and a projected budget for the time-share intervals for one (1) year after the date of the first transfer to a purchaser. The budget must include, without limitation:

(A) A statement of the amount, or a statement that there is no amount, included in the budget as a reserve for repairs and replacement;

(B) The projected common expense liability, if any, by category of expenditures for the time-share intervals;

(C) The projected common expense liability for all time-share intervals; and

(D) A statement of any services not reflected in the budget that the developer provides, or expenses that it pays;

(6) Any initial or special fee due from the purchaser at closing, together with a description of the purpose and method of calculating the fee;

(7) A description of any liens, defects, or encumbrances on or affecting the title to the time-share interval;

(8) A description of any financing offered by the developer;

(9) A statement that within ten (10) days from the date of the signing of the contract made by the purchaser, where the purchaser shall have made an on-site inspection of the time-share project prior to the signing of the contract of purchase, and where the purchaser has not made an on-site inspection of the time-share project prior to the signing of the contract of purchase fifteen (15) days from the date of signing of the contract, the purchaser may cancel any contract for the purchase of a time-share interval from developer;

(10) A statement of any pending suits material to the time-share intervals of which a developer has actual knowledge;

(11) Any restraints on alienation of any number of portion of any time-share intervals;

(12) A description of the insurance coverage, or a statement that there is no insurance coverage, provided for the benefit of time-share interval owners;

(13) Any current or expected fees or charges to be paid by time-share interval owners for the use of any facilities related to the property;

(14) The extent to which financial arrangements have been provided for completion of all promised improvements; and

(15) The extent to which a time-share unit may become subject to a tax or other lien arising out of claims against other owners of the same unit. [Acts 1981, ch. 372, § 13; T.C.A., § 64-3213; Acts 1983, ch. 210, § 3.]

Cross-References. Exemptions from statement requirement, § 66-32-115.

Material changes to be reported, § 66-32-116.

Regulation by commission, § 66-32-124.

Section to Section References. This section is referred to in §§ 66-32-102, 66-32-116.

Law Reviews. Selected Tennessee Legislation of 1983 (N. L. Resener, J. A. Whitson, K. J. Miller), 50 Tenn. L. Rev. 785 (1983).

66-32-113. Escrow of deposits. — (a)(1) A developer of a time-share program shall deposit into an escrow account established and held in this state, in an account designated solely for the purpose, by an independent bonded escrow company, or in an institution whose accounts are insured, a governmental agency or instrumentality, one hundred percent (100%) of all funds which are received during the purchaser's cancellation period provided for in this part. The deposit of such funds shall be evidenced by an executed escrow agreement between the escrow agent and the developer, the provisions of which shall include that:

(A) Its purpose is to protect the purchaser's right to a refund if the purchaser cancels the sales agreement for a time-share interval within the cancellation period;

(B) Funds may be disbursed to the developer by the escrow agent from the escrow account only after expiration of the purchaser's cancellation period and in accordance with the sales agreement;

(C) The escrow agent may release funds to the developer from the escrow account only after receipt of a sworn statement from the developer that no cancellation notice was received before expiration of the cancellation period; and

(D) If a buyer properly terminates the contract pursuant to its terms or pursuant to this part, the funds shall be paid to the buyer together with any interest earned, all as provided in § 66-32-114(a).

(2) Funds so deposited may be invested by the escrow agent in securities of the United States or any agency thereof or in savings or time deposits in institutions insured by an agency of the United States.

(b) If a developer contracts to sell a time-share estate and the construction, furnishings, and landscaping of the property submitted to time-share ownership have not been substantially completed in accordance with the plans and specifications and representations made by the developer in the disclosures required by this part, the developer shall immediately pay into an escrow account established and held in this state, in an account designated solely for the purpose, by an independent bonded escrow company, or in an institution whose accounts are insured, a governmental agency or instrumentality, all

payments received by or on behalf of the developer from the buyer on a contract of purchase. The escrow agent may invest the escrow funds in securities of the United States or any agency thereof or in savings or time deposits in institutions insured by an agency of the United States. Funds shall be released from escrow as follows:

(1) If a buyer properly terminates the contract pursuant to its terms or pursuant to this part, the funds shall be paid to the buyer, together with any interest earned;

(2) If the buyer defaults in the performance of the buyer's obligations under the contract of purchase and sale, the funds shall be paid to the developer, together with any interest earned; or

(3) If the funds of a buyer have not been previously disbursed in accordance with the provisions of this subsection, they may be disbursed to the developer by the escrow agent at the closing of the transaction, unless prior to the disbursement the escrow agent received from the buyer written notice of a dispute between the buyer and developer. If the money remains in this account for more than three (3) months and earns interest, the interest shall be paid as provided in this subsection.

(c) For the purpose of this section, "substantially completed" means that all amenities, furnishings, appliances and structural components and mechanical systems of buildings are completed and provided as represented in the public offering statement and that the premises are ready for occupancy and the proper governmental authority has caused to be issued a certificate of occupancy.

(d)(1) In lieu of the foregoing provisions in subsection (b), a developer may withdraw, after the initial rescission period for cancellation has expired, all payments received by the developer from the buyer toward the sales price, provided:

(A) The developer, prior to withdrawal of any funds, posts a surety bond, irrevocable letter of credit or other financial assurances acceptable to the commission in an amount equal to one hundred twenty-five percent (125%) of the cost to complete the time-share project. The developer shall be required to submit such cost and financial data as the commission may reasonably require; or

(B) The developer has obtained protection for nondefaulting purchasers in compliance with § 66-32-128, and has obtained a final and binding commitment letter on the construction of the project and a final and binding commitment letter on the financing of the same construction. A bond obtained pursuant to subdivision (d)(1)(A) shall be executed by the seller as principal and by a surety company authorized to do business in Tennessee as surety. The bond shall be conditioned upon the faithful compliance of the seller with this part including substantial completion, as defined in subsection (c), of the project and unit and compliance with the contract of purchase.

(2) Payments so withdrawn pursuant to this subsection may be used only to pay for construction costs of the improvements comprising the time-share project.

(e) In lieu of any escrows required by this section, the commission shall have the discretion to accept other financial assurances including, but not limited to, a performance bond or an irrevocable letter of credit in an amount at least

equal to or in excess of the cost to complete the time-share project. [Acts 1981, ch. 372, § 14; T.C.A., § 64-3214; Acts 1982, ch. 753, § 1; 1983, ch. 210, § 4; 1985, ch. 98, §§ 2-4.]

Section to Section References. This section is referred to in § 66-32-118.

Law Reviews. Comment, An Overview of Time-Sharing and the Tennessee Time-Share Act: Are Purchasers Now Protected?, 53 Tenn. L. Rev. 779 (1986).

Attorney General Opinions. Requirements that must be satisfied prior to withdrawing funds from escrow, OAG 95-119 (12/1/95).

66-32-114. Mutual rights of cancellation. — (a) Before transfer of a time-share interval and no later than the date of any sales contract, the developer shall provide the intended transferee with a copy of the public offering statement and any amendments and supplements thereto. The contract is voidable by the purchaser until the purchaser has received the public offering statement. The contract is also voidable by the purchaser for ten (10) days from the date of the signing of the contract by the purchaser if the purchaser shall have made an on-site inspection of the time-share project prior to the signing of the contract, and if the purchaser did not make an on-site inspection of the time-share project prior to signing the contract, for fifteen (15) days thereafter. Cancellation is without penalty, and all payments made by the purchaser before cancellation must be refunded within thirty (30) days after receipt of the notice of cancellation as provided in subsection (c).

(b) During the applicable rescission period, the developer may cancel the contract of purchase without penalty to either party. The developer shall return all payments due, the purchaser shall return all material received in good condition, reasonable wear and tear excepted. If such materials are not returned, the developer may deduct the cost of the same and return the balance to the purchaser.

(c) If either party elects to cancel a contract pursuant to subsection (a) or (b), that party may do so by hand delivering notice thereof to the other party within the designated period for voiding such contract or by mailing notice thereof by prepaid United States mail, postmarked anytime within the designated period for voiding such contract, to the other party or to such party's agent for service of process. The rescission rights set forth in subsections (a) and (b) may not be waived by either the purchaser or developer. [Acts 1981, ch. 372, § 15; T.C.A., § 64-3215; Acts 1983, ch. 210, § 5.]

Law Reviews. Selected Tennessee Legislation of 1983 (N. L. Resener, J. A. Whitson, K. J. Miller), 50 Tenn. L. Rev. 785 (1983).

66-32-115. Exemptions from requirement of public offering statement. — (a) The developer shall not be required to prepare and distribute a public offering statement if the developer has registered and there has been issued a public offering statement or similar disclosure document which is provided to purchasers under the following:

(1) Securities and Exchange Act of 1933.

(2) Federal Interstate Land Sales Full Disclosure Act in which the time-share program is made a part of the subdivision that is being registered; and

(3) Any federal or Tennessee act which requires a federal or state public offering statement or similar disclosure document to be prepared and provided to purchasers.

(b) A public offering statement need not be prepared or delivered in the case of:

(1) Any transfer of a time-share interval by any time-share interval owner other than the developer and/or his agent;

(2) Any disposition pursuant to court order;

(3) A disposition by a government or governmental agency;

(4) A disposition by foreclosure or deed in lieu of foreclosure;

(5) A disposition of a time-share interval in a time-share project situated wholly outside the state; provided, that all solicitations, negotiations, and contracts took place wholly outside this state and the contract was executed wholly outside this state;

(6) A gratuitous transfer of a time-share interval; or

(7) Group reservations made for fifteen (15) or more people as a single transaction between a hotel and travel agent or travel groups for hotel accommodations, where deposits are made and held for more than three (3) years in advance. [Acts 1981, ch. 372, § 16; T.C.A., § 64-3216.]

Compiler's Notes. The Securities and Exchange Act of 1933, referred to in subdivision (a)(1), is an apparent reference to the Securities Act of 1933, compiled in 15 U.S.C. § 77a et seq.

For federal provisions concerning time-share programs referred to in subdivision (a)(2), see 15 U.S.C. § 1701 et seq.

66-32-116. Material change. — The developer shall amend or supplement the public offering statement to report any material change in the information required by § 66-32-112. As to any exchange program, the developer shall use the current written materials that are supplied to it for distribution to the time-share interval owners as it is received. [Acts 1981, ch. 372, § 17; T.C.A., § 64-3217.]

66-32-117. Liens. — (a) Unless the purchaser expressly agrees to take subject to or assume a lien prior to transferring a time-share interval other than by deed in lieu of foreclosure, the developer shall record or furnish to the purchaser releases of all liens affecting that time-share interval, or shall provide a surety bond or insurance against the lien.

(b) Unless a time-share interval owner or such owner's predecessor in title agrees otherwise with the lienor, if a lien other than an underlying mortgage or deed of trust becomes effective against more than one (1) time-share interval in a time-share project, any time-share interval owner is entitled to a release of such owner's time-share interval from the lien upon payment of the amount. The payment must be proportionate to the ratio that the time-share interval owner's liability bears to the liabilities of all time-share interval owners whose interests are subject to the lien. Upon receipt of payment, the lienholder shall promptly deliver to the time-share interval owner a release of the lien covering that time-share interval. After payment, the managing entity may not assess or have a lien against that time-share interval for any portion of the expenses incurred in connection with that lien. [Acts 1981, ch. 372, § 18; T.C.A., § 64-3218.]

66-32-118. Violations — Attorney's fees — Criminal penalties. — (a) If a developer or any other person subject to this part violates any provision thereof or any provision of the project instruments, any person or class of persons adversely affected by the violation has a claim for appropriate relief. Punitive damages may be awarded for a willful violation of this part. The court may also award reasonable attorney's fees.

(b) Except as provided in subsection (c), any developer or any other person subject to this part who offers or disposes of a time-share interval without having complied with this part or who violates any provision of this part commits a Class C misdemeanor.

(c) Any developer or any other person subject to this part who knowingly, willfully and intentionally offers, disposes of, or jeopardizes the interest of the purchaser of a time-share interval in violation of § 66-32-113, § 66-32-122(a) or § 66-32-128 commits a felony punishable by a fine not exceeding five thousand dollars ($5,000) or by imprisonment for not less than one (1) year nor more than three (3) years, or by both such fine and imprisonment.

(d) Nothing in this part limits the power of the state to punish any person for any conduct or omission which constitutes a violation under any other provision of this code. [Acts 1981, ch. 372, § 19; T.C.A., § 64-3219; Acts 1986, ch. 601, § 1; 1987, ch. 194, § 1; 1989, ch. 591, § 113.]

Compiler's Notes. The felony penalty provisions in subsection (c) may have been affected by the Criminal Sentencing Reform Act of 1989. See §§ 39-11-113, 40-35-110, 40-35-111.

Cross-References. Penalty for Class C misdemeanor, § 40-35-111.

Section to Section References. This section is referred to in § 66-32-107.

66-32-119. Statute of limitations. — A judicial proceeding where the accuracy of the public offering statement or validity of any contract of purchase is in issue and a rescission of the contract or damages is sought must be commenced within four (4) years after the date of the contract of purchase, notwithstanding that the purchaser's terms of payments may extend beyond the period of limitation. However, with respect to the enforcement of provisions in the contract of purchase which require the continued furnishing of services and the reciprocal payments to be made by the purchaser, the period of bringing a judicial proceeding will continue for a period of four (4) years for each breach, but the parties may agree to reduce the period of limitation to not less than two (2) years. [Acts 1981, ch. 372, § 20; T.C.A., § 64-3220.]

66-32-120. Financial records. — (a) The person or entity responsible for making and/or collecting common expenses, assessments or maintenance assessments shall keep detailed financial records.

(b) All financial and other records shall be made reasonably available for examination by any time-share interval owner and such owner's authorized agents. [Acts 1981, ch. 372, § 21; T.C.A., § 64-3221.]

66-32-121. Powers and duties of commission. — (a) The commission may adopt, amend, and repeal rules, regulations and issue orders consistent with, and in furtherance of the objectives of this part.

(b) The commission may prescribe forms and procedures for submitting information to the commission.

(c) The commission may accept grants-in-aid from any governmental source and may contract with agencies charged with similar functions in this or other jurisdictions, in furtherance of the objectives of this part.

(d) The commission may cooperate with agencies performing similar functions in this and other jurisdictions to develop uniform filing procedures and forms, uniform disclosure standards, and uniform administrative practices, and may develop information that may be useful in the discharge of the commission's duties.

(e) The commission may initiate private investigations within or outside this state.

(f) The commission shall have the power to revoke, or suspend the real estate license of a sales agent, or the registration of a time-share project, or to otherwise appropriately discipline the sales agent, or fine the developer pursuant to the provisions of § 56-1-308, if, after notice and hearing, any of the following conditions exist:

(1) Any representation in any document or information filed with the commission is false or misleading; or

(2) Any developer or agent of a developer has:

(A) Engaged in or is engaging in any unlawful act or practice;

(B) Disseminated or caused to be disseminated orally, or in writing, any false or misleading promotional materials in connection with a time-share program;

(C) Concealed, diverted, or disposed of any funds or assets of any person in a manner impairing rights of purchasers of time-share intervals in the time-share program;

(D) Failed to perform any stipulation or agreement made to induce the commission to issue an order relating to that time-share program;

(E) Otherwise violated any provision of this part or the commission's rules, regulations, or orders;

(F) Makes any willful or negligent misrepresentation, or any willful or negligent omission of material fact about any time-share or time-share project, or exchange program;

(G) Makes any false promises of a character likely to influence, persuade or induce;

(H) Engages in any other conduct which constitutes improper, fraudulent or dishonest dealing; or

(I) Fails to promptly account for any funds held in trust, or who fails to display all records, books and accounts of such funds to the commission upon demand as provided for in this part, and the rules and regulations.

(g) The commission may issue a cease and desist order if the developer has not registered the time-share program as required by this part.

(h) The commission, after notice and hearing, may issue an order revoking the registration of a time-share program upon determination that a developer or agent of developer has failed to comply with a notice of suspension issued by the commission affecting the time-share program.

(i) The commission may reject an application for registration if the commission finds that:

(1) The developer or any entity or individual which composes the developer, or any officer or director of the developer does not possess a history of honesty,

truthfulness, and fair dealing. Factors to be used in making such determination shall include whether the developer or any entity or individual which composes the developer, or any officer or director of the developer has:

(A) Been convicted of, or has pleaded nolo contendere to, any crime involving an act of fraud or dishonesty;

(B) Consented to or suffered a judgment in any civil or administrative action based upon conduct involving an act of fraud or dishonesty;

(C) Consented to or suffered the suspension or revocation of any professional, occupational, or vocational license based upon conduct involving an act of fraud or dishonesty;

(D) Knowingly made or caused to be made in any application or report filed with the commission, or in any proceeding before the commission, any written or oral statement which was at the time, and in light of the circumstances under which it was made, false or misleading with respect to material fact;

(E) Willfully omitted a material fact with respect to information furnished or requested in connection with an application;

(F) Willfully committed any violation of, or has willfully aided, abetted, counseled, commanded, induced, or procured the violation by any other person, of any provision of state law or rule; or

(G) Been involved in unlicensed activity; or

(2) The commission may reject an application for registration if the commission finds that the developer or any entity or individual which composes the developer, or any officer or director of the developer does not possess a history of financial integrity. Factors to be used in making such determination shall include whether the developer or any entity or individual which composes the developer, or any officer or director of the developer:

(A) Has been placed in receivership or conservatorship during the previous ten (10) years;

(B) Has filed for bankruptcy within the previous ten (10) years; or

(C) Is liable for amounts of debt which would create excessive risks of default. [Acts 1981, ch. 372, § 22; T.C.A., § 64-3222; Acts 1985, ch. 98, §§ 5, 6; 1988, ch. 482, § 1.]

Section to Section References. Sections 66-32-121 — 66-32-126 are referred to in § 66-32-134.

This section is referred to in §§ 66-32-136, 66-32-137, 66-32-139.

Law Reviews. Selected Tennessee Legislation of 1983 (N. L. Resener, J. A. Whitson, K. J. Miller), 50 Tenn. L. Rev. 785 (1983).

66-32-122. Registration — Bond — Statement of exchange agent. — (a) Unless exempted by § 66-32-126, a developer may not offer or dispose of a time-share interval unless the time-share program is registered with the commission; provided, that a developer may accept a reservation together with a deposit if the deposit is placed in an escrow account with an institution having trust powers and is refundable at any time at the purchaser's option. In all cases, a reservation must require a subsequent affirmative act by the purchaser via a separate instrument to create a binding obligation. A developer may not dispose of or transfer a time-share interval while an order revoking or suspending the registration of the time-share program is in effect.

(b) The acquisition agent shall be required to furnish to the commission its principal office address and telephone number and designate its responsible managing employee and shall furnish such additional information as the commission may require.

(c) The sales agent shall, in addition to other requirements of law, be required to furnish to the commission its principal office address and telephone number and designate its responsible managing employee and shall furnish such additional information as the commission may require.

(d) The managing agent shall be required to furnish to the commission its principal office address and telephone number and designate its responsible managing employee and shall furnish such additional information as the commission may require. Such additional information shall include criminal convictions.

(e) An exchange agent, including the developer if it is also the exchange agent, if offering exchange privileges with other time-share interval owners of time-share interval owners who own time-share estates within this state, shall annually file a statement with the commission which must fully and accurately disclose:

(1) The identity of the person operating the exchange program and whether that person is an affiliate of the developer;

(2) A general description of the procedures to qualify for and effectuate exchanges, including any stated or practiced priorities and restrictions, and the extent to which changes thereof may be made;

(3) The expenses, or ranges of expenses, to the time-share interval owners of membership in the exchange program including the expenses, if any, and the person to whom those expenses are payable;

(4) Whether and how any of the expenses specified in subdivision (e)(3) may be altered and, if any of them are to be fixed on a case-by-case basis, the manner in which they are to be fixed in each case;

(5) With respect to the owners of time-share intervals in the exchange program at each project during a calendar year ending not more than fifteen (15) months before the statement is filed;

(6) The percentage of exchanges properly applied for by members or participants in the exchange program that were fulfilled during a calendar year ending not more than fifteen (15) months before the date the statement is filed with the commission, together with a statement of the criteria used to determine whether an exchange was properly applied for and fulfilled; and

(7) The number of persons applying for an exchange program as a whole during the calendar year ending not more than fifteen (15) months before the statement is filed with the commission.

(f) The developer must provide a copy of the most recent exchange agent's statement filed with the commission to the purchaser in addition to the public offering statement if it is represented to the purchaser that the purchaser is entitled to or required to become a member of the exchange program. The developer is not responsible to the purchaser for any representation made in the exchange agent's statement which is untrue or incorrect. [Acts 1981, ch. 372, § 23; T.C.A., § 64-3223; Acts 1983, ch. 210, § 6; 1989, ch. 65, § 4.]

Compiler's Notes. Time-share plans in existence before May 19, 1981 were required to be filed with the commissioner within 60 days of that date.

Section to Section References. This section is referred to in § 66-32-118.

66-32-123. Application and fees for registration. — (a) An application for registration must contain the public offering statement, a brief description of the property, copies of time-share instruments and any documents referred to therein other than tract maps, plats, plans, and such other information required by the commission's rules and regulations and be accompanied by any reasonable fees required by the commission.

(b) Fee for registration of time-share interval plans; expenses for investigation and prosecution:

(1) For the registration of all time-share interval plans and the accommodations and facilities affected thereby which are located within the state, there shall be paid to the commission the sum of one hundred dollars ($100), together with an annual renewal fee of fifty dollars ($50.00);

(2) For the registration of all time-share interval plans and the accommodations and facilities affected thereby which are located outside the state, there shall be paid to the commission the sum of two hundred fifty dollars ($250), together with an annual renewal fee of one hundred dollars ($100); and

(3) Notwithstanding the foregoing, the fees charged and collected shall be sufficient to cover the cost of administering this part. [Acts 1981, ch. 372, § 24; T.C.A., § 64-3224.]

Section to Section References. This section is referred to in § 66-32-207.

66-32-124. Commission regulation of public offering statement. — (a) The commission at any time may require a developer to alter or supplement the form or substance of a public offering statement to assure adequate and accurate disclosure to prospective purchasers.

(b) The public offering statement may not be used for any promotional purposes before registration and afterwards only if it is used in its entirety. No person may advertise or represent that the commission has approved or recommended the time-share program, the disclosure statement, or any of the documents contained in the application for registration. [Acts 1981, ch. 372, § 25; T.C.A., § 64-3225.]

66-32-125. Effective date of registration — Incomplete or inadequate application. — (a) Except as hereinafter provided, the effective date of the registration, or any amendment thereto, shall be the forty-fifth day after the filing thereof or such earlier date as the commission may determine, having due regard to the public interest and the protection of purchasers. If any amendment to any such registration is filed prior to the effective date, the registration shall be deemed to have been filed when such amendment was filed.

(b) If it appears to the commission that the application for registration, or any amendment thereto, is on its face incomplete or inaccurate in any material respect, the commission shall so advise the developer prior to the date the

registration would otherwise be effective. Such notification shall serve to suspend the effective date of the filing until the forty-fifth day after the developer files such additional information as the commission shall require. Any developer, upon receipt of such notice of suspension, may request a hearing. [Acts 1981, ch. 372, § 26; T.C.A., § 64-3226.]

66-32-126. Exceptions from registration requirement. — No registration with the commission shall be required in the case of:

(1) Any transfer of a time-share interval by any time-share interval owner other than the developer and/or the developer's agent;

(2) Any disposition pursuant to court order;

(3) A disposition by a government or governmental agency;

(4) A disposition by foreclosure or deed in lieu of foreclosure;

(5) A disposition of a time-share interval in a time-share project situated wholly outside this state; provided, that all solicitations, negotiations, and contacts took place wholly outside this state and the contract was executed wholly outside this state;

(6) A gratuitous transfer of a time-share interval; or

(7) Group reservations made for fifteen (15) or more people as a single transaction between a hotel and travel agent or travel groups for hotel accommodations, where deposits are made and held for more than three (3) years in advance. [Acts 1981, ch. 372, § 27; T.C.A., § 64-3227.]

Section to Section References. This section is referred to in § 66-32-122.

Law Reviews. Selected Tennessee Legislation of 1983 (N. L. Resener, J. A. Whitson, K. J. Miller), 50 Tenn. L. Rev. 785 (1983).

66-32-127. Financing of time-share programs. — (a) In the financing of a time-share program, the developer shall retain financial records of the schedule of payments required to be made and the payments made to any person or entity which is the owner of an underlying blanket mortgage, deed of trust, contract of sale or other lien or encumbrance ("lienhold").

(b) Any transfer of the developer's interest in the time-share program to any third person shall be subject to the obligations of the developer. [Acts 1981, ch. 372, § 28; T.C.A., § 64-3228.]

Cited: State v. Heath, 806 S.W.2d 535 (Tenn. Ct. App. 1990).

66-32-128. Protection of nondefaulting purchasers. — The developer whose project is subject to an underlying blanket lien or encumbrance shall protect nondefaulting purchasers from foreclosure by the lienholder by obtaining from the lienholder a nondisturbance clause, subordination agreement or partial release of the lien as the time-share intervals are sold. In the alternative, the developer may obtain the agreement of the lienholder to take the project, in the event of default by the developer, subject to the rights of the nondefaulting purchasers by posting a bond, equal to fifty percent (50%) of the amount owed to the lienholder, making an assignment of receivables equal to one hundred twenty-five percent (125%) of the principal amounts due to the lienholder, pledging collateral security equal to one hundred percent (100%) of

the amount owed to the lienholder or entering into any other financing plan or escrow agreement acceptable to the lienholder. [Acts 1981, ch. 372, § 29; T.C.A., § 64-3229.]

Section to Section References. This section is referred to in §§ 66-32-113, 66-32-118.

Cited: State v. Heath, 806 S.W.2d 535 (Tenn. Ct. App. 1990).

66-32-129. Protection of lienholder. — The lienholder in any time-share program shall have the following rights:

(1) A lienholder's lien rights shall be preserved as against any purchaser of time-share interval claiming that the time-share is invalid, void or voidable, thirty (30) days after written notice by certified mail or personal delivery has been given by the developer to the purchaser. Such notice must state the developer has assigned the receivables to the lienholder and that purchaser has thirty (30) days within which to object and specify the invalidity or defect contained within such instrument.

(2) Any purchaser who fails to indicate the invalidity, void or voidableness as provided in subdivision (1) waives or is estopped to raise, the same in any subsequent enforcement of the collection of the receivable by the lienholder. [Acts 1981, ch. 372, § 30; T.C.A., § 64-3230.]

66-32-130. Premiere tourist resort city. — Notwithstanding any of the foregoing, a "premiere tourist resort city" defined as a municipality having a population of three thousand (3,000) or more persons, according to the federal census of 1980 or any subsequent federal census in which at least forty percent (40%) of the assessed valuation (as shown by the tax assessment rolls or books of the municipality) of real estate in the municipality consists of hotels, motels, tourist court accommodations, tourist shops and restaurants, is hereby authorized to adopt by its board of commissioners any ordinance necessary to regulate the sale and use of time-share units within its jurisdiction including the requirement of registration, licenses, transfer and related requirements including any related fees. [Acts 1981, ch. 372, § 34; T.C.A., § 64-3231.]

66-32-131. Misleading advertising unlawful. — It is unlawful for any person with intent directly or indirectly to offer for sale or sell time-share intervals in this state to authorize, use, direct or aid in the publication, distribution or circulation of any advertisement, radio broadcast or telecast concerning the time-share project in which the time-share intervals are offered, which contains any statement, pictorial representation or sketch which is false or misleading. Nothing in this section shall be construed to hold the publisher or employee of any newspaper, or any job printer, or any broadcaster or telecaster, or any magazine publisher, or any of the employees thereof, liable for any publication herein referred to unless the publisher, employee, or printer has actual knowledge of the falsity thereof or has an interest either as an owner or agent in the time-share intervals so advertised. [Acts 1983, ch. 210, § 7.]

Section to Section References. Sections 66-32-131 — 66-32-135 are referred to in § 66-32-136.

Sections 66-32-131 — 66-32-133 are referred to in § 66-32-135.

Law Reviews. Comment, An Overview of Time-Sharing and the Tennessee Time-Share Act: Are Purchasers Now Protected?, 53 Tenn. L. Rev. 779 (1986).

66-32-132. Advertising — Specific prohibitions. — No advertising for the offer or sale of time-share intervals shall:

(1) Contain any representation as to the availability of a resale program or rental program offered by or on behalf of the developer or its affiliate unless the resale program and/or rental program has been made a part of the offering and submitted to the commission;

(2) Contain an offer or inducement to purchase which purports to be limited as to quantity or restricted as to time unless the numerical quantity and/or time applicable to the offer or inducement is clearly and conspicuously disclosed;

(3) Contain any statement concerning the investment merit or profit potential of the time-share interval unless the commission has determined from evidence submitted on behalf of the developer that the representation is neither false nor misleading;

(4) Make a prediction of or imply specific or immediate increases in the price or value of the time-share intervals; nor shall a price increase of a time-share interval be announced more than sixty (60) days prior to the date that the increase will be placed into effect;

(5) Contain statements concerning the availability of time-share intervals at a particular minimum price if the number of time-share intervals available at that price comprises less than ten percent (10%) of the unsold inventory of the developer, unless the number of time-share intervals then for sale at the minimum price is set forth in the advertisement;

(6) Contain any statement that the time-share interval being offered for sale can be further divided unless a full disclosure is included as to the legal requirements for further division of the time-share interval;

(7) Contain any asterisk or other reference symbol as a means of contradicting or changing the ordinary meaning of any previously made statement in the advertisement;

(8) Misrepresent the size, nature, extent, qualities, or characteristics of the accommodations or facilities which comprise the time-share project;

(9) Misrepresent the nature or extent of any services incident to the time-share project;

(10) Misrepresent or imply that a facility or service is available for the exclusive use of purchasers or owners if a public right of access or of use of the facility or service exists;

(11) Make any misleading or deceptive representation with respect to the contents of the time-share program, the purchase contract, the purchaser's rights, privileges, benefits or obligations under the purchase contract or this part;

(12) Misrepresent the conditions under which a purchaser or owner may participate in an exchange program; or

(13) Describe any proposed or uncompleted private facilities over which the developer has no control unless the estimated date of completion is set forth

and evidence has been presented to the commission that the completion and operation of the facilities are reasonably assured within the time represented in the advertisement. [Acts 1983, ch. 210, § 8.]

66-32-133. Prize or gift promotional offers — Unlawful acts. — The following unfair acts or practices undertaken by, or omissions of, any person in the operation of any prize or gift promotional offer, by any means, including, but not limited to, by mail, by telephone, by advertisement or in person, for a time-share project are prohibited:

(1) Failing to clearly and conspicuously state the name and street address of the person making the offer;

(2) Representing or leading a person to believe that the person is or could be a winner if the person has not won or is not eligible to win;

(3) Representing or leading a person to believe that the person has been "selected" or is otherwise part of a select or special group when the person has not been selected or is not part of a select or special group;

(4) Representing that a person has won or could win a prize, or will receive a gift, or thing of value or has been selected, or is eligible, to win a prize, or receive a gift, or thing of value if the receipt of the prize, or gift, or thing of value is conditioned upon the person listening to or observing a sales promotional effort, making a purchase, or incurring any monetary obligation unless it is clearly and conspicuously disclosed, at the time of the initial offer, contact, or notification of the prize or gift, or thing of value that an attempt will be made to induce the consumer or person to incur a monetary obligation, including the amount of any monetary obligation;

(5) Failing to clearly and conspicuously disclose next to each prize, gift, or thing of value offered or any product offered for sale through the promotional plan the item's approximate verifiable retail value, which means the price at which the person offering the item can substantiate that a substantial number of these items have been sold at retail by another person or, in the event such substantiation is unavailable, nor more than three (3) times the amount actually paid by the sponsor or promoter for the item;

(6) Representing that the prize, gift, or thing of value offered or any product offered for sale through the promotional plan possesses particular features or benefits, if it does not, or is of a particular standard, quality, grade, or model, if it is of another;

(7) Failing to clearly and conspicuously disclose next to each prize, gift, or thing of value offered, a statement of odds, if applicable, in Arabic numerals, of receiving each item offered, and a statement, if applicable, that those offers are not exclusive to the above-named person and whether all prizes or gifts will be awarded;

(8) Making the receipt of an offered prize or gift contingent upon the consent of individual winners or recipients to allow their names to be used for promotional purposes, or failing to obtain the express written or oral consent of individual winners or recipients before their names are used for a promotional purpose in connection with the mailing to a third person;

(9) Refusing to disclose or make available, upon request, the names of the recipients of any prizes or gifts within the geographic area wherein the promotional offers were made;

(10)(A) Failing to clearly and conspicuously disclose in any initial offer, at a minimum, the following:

(i) A general description of the types and categories of any restrictions, qualifications, or other conditions, that must be satisfied before the person is entitled to receive or use the prize, gift, or thing of value or product or service offered;

(ii) The approximate total of all costs, fees, or other monetary obligations that must be satisfied before the consumer or person is entitled to receive or use the prize, gift, or thing of value or product or service offered; and

(iii) That the details and an explanation of all restrictions, qualifications or other conditions of the offer shall be provided prior to the acceptance of the offer; or

(B) Failing to clearly and conspicuously state verbally, or upon request, in writing, before an offer can be accepted all restrictions, qualifications, monetary obligations, and other conditions that must be satisfied before the person is entitled to receive or use the prize, gift, or thing of value or product or service offered, including:

(i) Any deadline by which the recipient must visit the business, attend or listen to a sales presentation or otherwise respond in order to receive the prize, gift, or thing of value or product or service offered;

(ii) The date or dates on or before which the prize, gift or thing of value, product or service offered will terminate or expire and, if applicable, when the prizes will be awarded;

(iii) The approximate duration of any mandatory sales presentation or tour, if applicable;

(iv) Any other conditions, such as a minimum or maximum age qualification, any financial qualification, or requirement that, if the recipient is married, both spouses must be present or respond in order to receive the prize, gift or thing of value or product or service offered; and

(v) All other material rules, terms, restrictions, and conditions of the offer or promotional program including, but not limited to, any promotional service, handling, shipping, delivery, freight, postage or processing fees, charges, or other extra costs for the receipt or use of the prize, gift, or thing of value or product or service offered; provided that the requirements of this subdivision shall not be construed to require that foreign tax rates be included;

(11) Misrepresenting in any manner the rules, terms, restrictions, monetary obligation, or conditions of participation in the promotional plan or offer;

(12) Failing to award and distribute the prize, gift, or thing of value or product or service offered in accordance with the rules, terms, and conditions of the offer or promotional program as stated or disclosed in accordance with the above subdivisions; and

(13)(A) Failing to award and distribute at least one (1) of each prize or gift of the value and type represented in the promotional program by the day and year specified in the promotion. When a promotion promises the award of a prescribed number of each prize, such number of prizes shall be awarded by the date and year specified in the promotion. For purposes of this subsection, distribution of cash shall be equivalent to distribution of a gift or prize, and

a qualified recipient shall be allowed to choose either the gift or prize or cash in an amount equal to the cost of the gift or prize only if the gift or prize is not delivered to a qualified recipient within seventy-two (72) hours of the time the recipient would have been entitled to the gift or prize.

(B) Such choice shall be disclosed to the recipient at the time of the initial offering. [Acts 1983, ch. 210, § 9; 1991, ch. 81, §§ 1, 2; 1991, ch. 84, § 1; 1993, ch. 230, § 1.]

66-32-134. Violation of §§ 66-32-131 — 66-32-133. — Whenever the commission determines from evidence available to it that a person is violating or failing to comply with the requirements of §§ 66-32-131 — 66-32-133, the commission may order the person to cease and desist from such violations and may take enforcement action under the provisions of §§ 66-32-121 — 66-32-126. [Acts 1983, ch. 210, § 10.]

66-32-135. Construction of §§ 66-32-131 — 66-32-133 with Tennessee Consumer Protection Act. — The provisions of §§ 66-32-131 — 66-32-133 shall be in addition to those provisions in the Tennessee Consumer Protection Act; provided, that to the extent that any provisions of the Tennessee Consumer Protection Act are in conflict with the provisions contained herein, the provisions of Tennessee Consumer Protection Act shall control. [Acts 1983, ch. 210, § 11.]

Compiler's Notes. The Tennessee Consumer Protection Act is compiled in title 47, ch. 18.

66-32-136. Advertising material — Engaging time-share resale broker in connection with resale of time-share interval. — (a) Any advertising material relating to the solicitation of an agreement engaging the services of a time-share resale broker in connection with the resale of a time-share interval pursuant to § 66-32-137(b) is subject to the provisions of §§ 66-32-131 — 66-32-135.

(b) "Advertising material" includes any oral or written sales pitch, promotional brochure, pamphlet, catalogue, advertisement, sign, billboard or other material to be disseminated to the public by any means relating to the solicitation of an agreement engaging the services of a time-share resale broker in connection with the resale of a time-share interval, pursuant to § 66-32-137(b), including a transcript of any standard oral sales presentation or any radio or television advertisement.

(c) No written advertising material relating to the solicitation of an agreement engaging the services of a time-share resale broker in connection with the resale of a time-share interval, pursuant to § 66-32-137(b), may be utilized by a time-share resale broker unless the advertising material includes in conspicuous type the disclosure described in § 66-32-137(b)(1).

(d) The commission has authority to enforce the provisions of this section as provided in §§ 66-32-121 and 62-13-109. [Acts 1990, ch. 672, §§ 3, 5.]

66-32-137. Violations — Required contents of written agreements engaging the services of a resale broker and contracts for purchase

and sale. — (a) It is a violation of this part for any time-share resale broker to:

(1) Enter into any agreement with any person engaging the services of the time-share resale broker in connection with the resale of a time-share interval unless a written agreement complying in all respects with the provisions of subsection (b) is first executed by the time-share resale broker and the person engaging the services of the time-share resale broker;

(2) Accept any moneys or any other thing of value from any person engaging the services of the time-share resale broker in connection with the resale of a time-share interval in advance of the closing of the resale of such time-share interval; or

(3) Utilize any form of contract or purchase and sale agreement in connection with the resale of a time-share interval unless the contract or purchase and sale agreement complies in all respects with the provisions of subsection (d).

(b) In addition to all requirements of and obligations under the Tennessee Real Estate Broker License Act of 1973, compiled in title 62, chapter 13, all agreements engaging the services of a time-share resale broker in connection with the resale of a time-share interval shall contain all of the following:

(1) The following statement in conspicuous type located immediately prior to the space in the agreement reserved for the signature of the owner:

"THERE IS NO GUARANTEE THAT YOUR TIME-SHARE INTERVAL CAN BE SOLD AT ANY PARTICULAR PRICE OR WITHIN ANY PARTICULAR PERIOD OF TIME";

(2) A complete and clear disclosure of any fees, commissions, and other costs or compensation payable to or received by the time-share resale broker under the agreement, whether directly or indirectly;

(3) The term of the agreement, a statement regarding the ability of any party to extend the term of the agreement, and a description of the conditions under which the agreement may be extended and all related costs;

(4) A description of the services to be provided by the time-share resale broker under the agreement, and a description of the obligations of each party regarding a resale purchaser, including any costs to be borne and any obligations regarding notification of the managing entity and any exchange company;

(5) A statement disclosing whether the agreement grants exclusive rights to the time-share resale broker to locate a purchaser during the term of the agreement, a statement disclosing to whom and when any proceeds from a sale of the time-share interval will be disbursed, and a statement whether any party may terminate the agreement and under what conditions;

(6) A statement disclosing whether the agreement permits the time-share resale broker or any other person to make any use whatsoever of the time-share interval in question and a detailed description of any such permitted use rights, including a disclosure of to whom any rents or profits generated from such use of the time-share interval will be paid; and

(7) A statement disclosing the existence of any judgments or orders against the time-share resale broker resulting from a violation by the time-share resale broker of this part, the Tennessee Real Estate Broker License Act of

1973, compiled in title 62, chapter 13, or the Tennessee Consumer Protection Act of 1977, compiled in title 47, chapter 18, part 1, or resulting from consumer fraud on the part of the time-share resale broker.

(c) The person engaging the services of the time-share resale broker must receive a fully executed copy of the agreement described in subsection (b) on the day such person signs it.

(d) All forms of contract or purchase and sale agreement utilized by a time-share resale broker in connection with the sale of a time-share interval shall contain all of the following:

(1) An explanation of the form of time-share ownership being purchased and a legally sufficient description of the time-share interval being purchased;

(2) The name and address of the managing entity of the time-share plan;

(3) The following statement in conspicuous type located immediately prior to the space in the contract reserved for the signature of the purchaser:

"THE CURRENT YEAR'S ASSESSMENT FOR COMMON EXPENSES ALLOCABLE TO THE TIME-SHARE INTERVAL YOU ARE PURCHASING IS $_____. THIS ASSESSMENT, WHICH MAY BE INCREASED FROM TIME TO TIME BY [insert name of entity having authority to increase assessment], IS PAYABLE IN FULL ON OR BEFORE [state payment due date(s)]. THIS ASSESSMENT [INCLUDES/DOES NOT INCLUDE] YEARLY AD VALOREM REAL ESTATE TAXES. [If ad valorem real property taxes are not included in the current year's assessment for common expenses, the following statement must be included: THE MOST RECENT ANNUAL ASSESSMENT FOR AD VALOREM REAL ESTATE TAXES FOR THE TIME-SHARE INTERVAL YOU ARE PURCHASING IS $ _____]. FAILURE TO TIMELY PAY THESE ASSESSMENTS MAY RESULT IN RESTRICTION OR LOSS OF YOUR USE AND/OR OWNERSHIP RIGHTS."

In making the disclosures required by this subdivision, the time-share resale broker may rely upon information provided in writing by the managing entity of the time-share project;

(4) A complete and accurate disclosure of the terms and conditions of the purchase and closing, including the obligations of the seller and/or the purchaser for closing costs and title insurance;

(5) A statement disclosing the existence of any mandatory exchange program membership included in the time-share project;

(6) In lieu of the above, a time-share resale broker affiliated with a time-share developer may use the public offering statement and sales contract to consummate a resale; provided, that such information includes the substance of all of the above.

(e) The commission has authority to enforce the provisions of this section as provided in §§ 66-32-121 and 62-13-109. [Acts 1990, ch. 672, §§ 4, 5.]

Section to Section References. This section is referred to in §§ 66-32-102, 66-32-136.

66-32-138. Delivery of required renewal documentation and fees. — Notwithstanding any other provision of law to the contrary, all documentation and fees which are a prerequisite to the renewal of a license or registration

shall be delivered to the commission no later than sixty (60) days prior to the expiration date of the license or registration. [Acts 2000, ch. 861, § 1.]

Effective Dates. Acts 2000, ch. 861, § 5. May 31, 2000.

66-32-139. Registration of acquisition agents — Penalties for prohibited activity and conduct — Commissions authority to promulgate rules and regulations. — (a) All acquisition agents and their representatives, as defined in § 66-32-102, shall register with the commission and furnish such information as provided by commission regulation. The application for registration shall be accompanied by a twenty-five dollar ($25.00) registration fee.

(b) The commission has the authority to assess civil penalties, or to suspend or revoke the registration of an acquisition agent, for any activity or conduct in violation of § 62-13-312 or § 66-32-121. The commission also has the authority to promulgate rules and guidelines for the training and conduct of acquisition agents. [Acts 2000, ch. 861, § 3.]

Effective Dates. Acts 2000, ch. 861, § 5, May 31, 2000.

Section to Section References. This section is referred to in § 62-13-303.

Part 2—Vacation Clubs

66-32-201. Short title. — This part shall be known and may be cited as the "Tennessee Vacation Club Act of 1995." [Acts 1995, ch. 90, § 1.]

Compiler's Notes. Acts 1995, ch. 90, § 1 originally provided that "This act shall be known and may be cited as the "Tennessee Vacation Club Act of 1995". Acts 1995, ch. 90 is codified as this part, and, in § 66-32-102, added "vacation club interest" in the definition of "Time-share use" and added the definitions for "Component site," "Reservation system," "Vacation club," and "Vacation club documents."

66-32-202. Legislative intent. — The purpose of this part is to recognize that the sale and promotion of vacation clubs is an emerging, dynamic segment of the international tourism industry; that this segment of the tourism industry continues to grow, both in volume of sales and in complexity and variety of product structure; and that a uniform and consistent method of regulation is necessary in order to safeguard the state's consumers and the state's economic well-being. It is the intent of the general assembly that this part be interpreted broadly in order to enhance the quality of vacation clubs offered and sold in this state and to protect consumers who purchase vacation club interests. [Acts 1995, ch. 90, § 2.]

66-32-203. Application. — This part applies only to sellers of vacation club interests who offer for disposition vacation club interests to the general public in Tennessee. For purposes of this section, an offer shall be considered to be made in this state only if the offer:

(1) Originates from this state; or

(2) Is directed by the offeror into this state and is received at the place to which it is directed. [Acts 1995, ch. 90, § 3.]

66-32-204. Exemptions. — This part does not apply to any of the following:

(1) An offer or disposition other than in the ordinary course of business by any holder of a purchase money lien, including any assignee thereof, who acquires a vacation club interest as a result of an owner's default with respect to the owner's purchase money financing obligations, whether such vacation club interest is acquired by foreclosure, the acceptance of a deed in lieu thereof, or other legal or equitable means;

(2) A gratuitous disposition;

(3) A disposition by devise, descent, or distribution or a disposition to an inter vivos trust;

(4) An offer or disposition of a vacation club interest by an owner other than a developer, unless such owner makes such offer and disposition in the ordinary course of its business; or

(5) An offer or disposition of a vacation club interest that is part of a duly registered vacation club pursuant to the laws of a state with the same or more stringent requirements as this state. [Acts 1995, ch. 90, § 4.]

66-32-205. "Vacation club interest" defined. — "Vacation club interest" means and includes the following interests in a vacation club:

(1) A "specific time-share interest," which is a right to use a specific accommodation or accommodations, and facilities at one (1) component site of a vacation club, for the remaining term of the vacation club in the event that the reservation system is terminated for any reason prior to the expiration of the term of the vacation club, together with use rights in the other accommodations and facilities of the vacation club created by or acquired through the reservation system; provided, that there is a one-to-one purchaser to accommodation ratio for each time-share interval, which entitles a particular owner who complies fully with the reservation system's rules and regulations to reserve, use and occupy a protected accommodation of the vacation club completely independent of any other owner's failure for reason to reserve, use, or occupy an accommodation of the vacation club; and

(2) A "nonspecific time-share interest," which is a right to use all of the accommodations and facilities of a vacation club created by or acquired through the reservation system, but including no specific right to use any particular accommodations or facilities for the remaining term of the vacation club in the event that the reservation system is terminated for any reason prior to the expiration of the term of the vacation club; provided, that there is a one-to-one purchaser to accommodation ratio for each time-share interval, which entitles a particular owner who complies fully with the reservation system's rules and regulations to reserve, use and occupy a protected accommodation of the vacation club completely independent of any other owner's failure for reason to reserve, use, or occupy an accommodation of the vacation club. [Acts 1995, ch. 90, § 6.]

66-32-206. Reservation systems. — (a) A vacation club's reservation system shall be subject to the requirements for subordination or other financial assurances set forth in this part. Prior to offering vacation club interests, a developer shall create or provide a reservation system, including all appropri-

ate computer hardware and software which is necessary to satisfy owners' reasonable expectations concerning the use and occupancy of the vacation club's accommodations, based upon the developer's representations and the terms and conditions of the vacation club documents, and establish rules and regulations for its operation. In establishing such rules and regulations, the developer shall take into account the anticipated demand for use and occupancy of the vacation club's accommodations in view of the size and type of each accommodation, each component site location, the time of year, the projected common expenses of the vacation club from year to year, and all other relevant factors, and shall use its good faith and best efforts, based upon all evidence reasonably available to the developer under the circumstances, to maximize the collective opportunities for all of the owners of vacation club interests to use and occupy the vacation club's accommodations.

(b)(1) The person(s) authorized by the vacation club documents to make additions or substitutions of accommodations to the vacation club, pursuant to this part, shall owe a fiduciary duty to each owner of a vacation club interest to act in the collective best interests of all such owners in connection with any such addition or substitution and to adhere to the demand balancing standard set forth above in ascertaining the desirability of any proposed addition or substitution and the anticipated impact thereof upon the practical ability of owners to reserve, use, and occupy the vacation club's accommodations.

(2) Prior to offering any vacation club interest in a vacation club, a developer shall provide to the commission satisfactory evidence of the existence of the vacation club's reservation system and shall certify to the commission that such reservation system is fully operative.

(3) Any agreement between a vacation club and a reservation system provider must state that, following a termination of the provider's contract by either party, the reservation system provider will, in the vacation club managing entity's sole discretion, either:

(A) Permit the vacation club to utilize the reservation system for a transition period of up to nine (9) months in the same manner and at the same cost as the vacation club utilized the reservation system prior to the termination in order to afford the vacation club managing entity a reasonable opportunity to obtain a new reservation system and arrange for the transfer of all relevant data from the old reservation system to the new reservation system as described in subdivision (b)(3)(B); or

(B) Promptly transfer to the vacation club managing entity all relevant data contained in the reservation system, including but not limited to the names, addresses, and reservation status of accommodations at the vacation club's component sites, the names and addresses of all owners, all outstanding confirmed reservations and reservation requests, and such other owner and component site records and information as is sufficient, in the reasonable discretion of the vacation club managing entity, to permit the uninterrupted operation and administration of the vacation club for the collective benefit of owners of vacation club interests therein. All reasonable costs incurred by the reservation system provider in effecting such transfer shall be reimbursed thereto and shall constitute common expenses of the vacation club. [Acts 1995, ch. 90, § 8.]

66-32-207. Developers subject to commission — Prerequisites to vacation club offering. — A developer of a vacation club interest shall in all respects be subject to the authority of the commission and any rules and regulations promulgated by the commission. Unless specifically exempted, a developer of a vacation club interest may not offer or dispose of a vacation club interest unless it is registered with the commission under § 66-32-123, and pays any fee required by § 66-32-123. Prior to offering any vacation club intervals in a vacation club, a developer shall provide the commission:

(1) Satisfactory evidence of the existence of the time-share intervals that are part of the vacation club;

(2) The marketing plan for the vacation club;

(3) Proof of ownership or a leasehold estate of the time-share intervals that are part of the vacation club; and

(4) Satisfactory proof of compliance with this part, including, but not limited to, a public offering statement, escrow of deposits, cancellation rights, advertising and promotional offers. [Acts 1995, ch. 90, § 9.]

Part 3—Membership Camping

66-32-301. Short title. — This part shall be known and may be cited as the "Membership Camping Act." [Acts 1985, ch. 303, § 1; T.C.A., § 47-18-401.]

Compiler's Notes. This part was transferred from title 47, ch. 18, part 4 in 1995.

Cross-References. Time sharing, part 1 of this chapter.

Section to Section References. This part is referred to in §§ 47-18-120, 47-18-124, 47-18-125, 47-18-2102.

66-32-302. Part definitions. — As used in this part, unless the context otherwise requires:

(1) "Advertisement" means any written, printed, verbal, or visual offer;

(2) "Blanket encumbrance" means any mortgage, deed of trust, option to purchase, vendor's lien or interest under a contract or agreement of sale, or other material financing lien or encumbrance granted by the membership camping operator, which secures or evidences the obligation to pay money or to sell or convey any campgrounds located in this state made available to purchasers by the membership camping operator or any portion thereof and which authorizes, permits, or requires the foreclosure or other disposition of the campground affected;

(3) "Campground" means real property owned or operated by a membership camping operator which is available for camping by purchasers of membership camping contracts;

(4) "Camping site" means a space designed and promoted for the purpose of locating a trailer, tent, tent trailer, pickup camper, or other similar device used for camping;

(5) "Facilities" means the following amenities provided and located on property owned or operated by a membership camping operator: camping sites, rental trailers or cabins, swimming pools, sport courts, recreation buildings, and trading posts or grocery stores;

(6) "Holder" includes the seller who acquires a membership camping contract or, if the contract is purchased, a financing agency or other assignee that purchases the contract;

(7) "Membership camping contract" means an agreement offered or sold within this state evidencing a purchaser's title to, interest in, right or license to use, for more than thirty (30) days, the campgrounds and facilities of a membership camping operator and includes a membership which provides for this use;

(8) "Membership camping operator" means any enterprise, other than one that is tax exempt under § 501(c)(3) of the Internal Revenue Code of 1954, as amended, that solicits membership camping contracts paid for by a fee or periodic payments and has as one (1) of its purposes camping or outdoor recreation including use of camping sites primarily by purchasers;

(9) "Nondisturbance agreement" means an instrument by which the holder of a blanket encumbrance agrees that:

(A) Its rights in any campground made available to purchasers by the membership camping operator shall be subordinate to the rights of purchasers from and after the recordation of the instrument;

(B) The holder and all successors and assignees, and any person who acquires the campground through foreclosure or by deed in lieu of foreclosure of such blanket encumbrance, shall take the campground subject to the rights of purchasers; and

(C) The holder or any successor acquiring the campground through the blanket encumbrance shall not use or cause the campground to be used in a manner which would materially prevent purchasers from using or occupying the campground in a manner contemplated by the purchasers' membership camping contracts; provided, that the holder shall have no obligation or liability to assume the responsibilities or obligations of the membership camping operator under membership camping contracts;

(10) "Offer" means any solicitation reasonably designed to result in the entering into of a membership camping contract;

(11) "Person" means any individual, corporation, partnership, company, and any other form of multiple organization for carrying on foreign or domestic business, other than a government or a subdivision of a government;

(12) "Purchaser" means a person who enters into a membership camping contract and obtains the right to use the camping or outdoor facilities of a membership camping operator;

(13) "Reciprocal program" means any arrangement allowing purchasers to use camping sites, facilities, or other properties owned or operated by any person other than the membership camping operator with whom the purchaser has entered into a membership camping contract;

(14) "Sale" or "sell" means entering into, or other disposition, of a membership camping contract for value, but the term "value" does not include a fee to offset the reasonable costs of transfer of a membership camping contract; and

(15) "Seller" means a membership camping operator. [Acts 1985, ch. 303, § 2; T.C.A., § 47-18-402.]

Compiler's Notes. Section 501(c)(3) of the Internal Revenue Code of 1954, referred to in this section, is codified as 26 U.S.C. § 501(c)(3).

66-32-303. Disclosures to purchasers. — A membership camping operator shall disclose the following information to a purchaser before the purchaser signs a membership camping contract or gives any money or thing of value for the purchase of a membership camping contract. The disclosures shall be delivered to the purchaser prior to the time the contract is signed and may be presented in any format selected by the membership camping operator. The disclosures may be included in or as part of the contract at the option of the membership camping operator and shall clearly communicate all of the following as of a date no more than one (1) year prior to the date of purchase:

(1) The name and address of the principal place of business of the membership camping operator and any material affiliate of the membership camping operator;

(2) A brief description of the membership camping operator's experience in the membership camping business, including the number of years the membership camping operator has been in the membership camping business;

(3) A brief description of the nature of the purchaser's right or license to use the membership camping operator's campground or facilities;

(4) The location of each of the membership camping operator's campgrounds and a brief description of the significant facilities at each campground then available for use by purchasers and those which are represented to purchasers as being planned, together with a brief description of any facilities that are or will be available to nonpurchasers or nonmembers.

(A) "Significant facilities" includes, but is not limited to, each of the following: the number of campsites in each park; the number of campsites in each park with full or partial hookups; swimming pools; tennis courts; recreation buildings; restrooms and showers; laundry rooms; trading posts; or grocery stores; and

(B) "Partial hookups" means those hookups with at least one (1) of the following connections: electricity, water, or sewer connections;

(5) A brief description of the membership camping operator's ownership of, or other right to use, the campgrounds represented to be available for use by purchasers, together with the duration of any material lease, license, franchise, or reciprocal agreement entitling the membership camping operator to use the campground, and any material provisions of any agreements which restrict a purchaser's use of the campground;

(6) A summary or copy of the rules, restrictions, or covenants regulating the purchaser's use of the membership camping operator's campgrounds, including a statement of whether and how the rules, restrictions, or covenants may be changed;

(7) A description of any restraints on the transfer of the membership camping contract;

(8) A brief description of the policies relating to the availability of camping sites and whether reservations are required;

(9) A brief description of any grounds for forfeiture of a purchaser's membership camping contract;

(10) A brief description of all payments of a purchaser under a membership camping contract, including initial fees and any further fees, charges, or assessments, together with any provisions for changing the payments;

(11) A copy of the membership camping contract signed by the purchaser;

(12) A statement of the purchaser's right to cancel the membership camping contract as provided in § 66-32-304;

(13) A description of the manner in which the membership camping operator has complied or proposes to comply with the provisions of § 66-32-307;

(14) A description of any liens, defects, or encumbrances on or affecting the title to the membership contracts or to the campgrounds;

(15) A statement of the amount, or a statement that there is no amount, included in the budget as a reserve for repairs and replacement;

(16) The projected common expense liability, if any, by category of expenditures for the members;

(17) Any initial or special fee due from the purchaser at closing, together with a description of the purpose and method of calculating the fee;

(18) A description of the insurance coverage, or a statement that there is no insurance coverage, provided for the benefit of members; and

(19) A statement of the means, including all financial arrangements, by which the developer proposes to assure the completion of all promised improvements. [Acts 1985, ch. 303, § 3; T.C.A., § 47-18-403.]

66-32-304. Cancellation of contracts. — (a) Any membership camping contract may be cancelled at the option of the purchaser by personally delivering or sending written notice of the cancellation to the membership camping operator at the address shown in the contract. The notice must be posted not later than twelve o'clock midnight (12:00) of the fifteenth calendar day following the day on which the membership camping contract was signed, if the purchaser did not make an on-site inspection of the campground, or the tenth calendar day following the day on which the membership camping contract was signed, if the purchaser did make an on-site inspection of the campground.

(b) The purchaser's cancellation right shall be set forth in bold type in the membership camping contract in close proximity to the purchaser's signature line.

(c) Within thirty (30) days after the membership camping operator receives a notice of cancellation, and provided that the purchaser's check, if any, has been cleared by the purchaser's bank, the membership camping operator shall refund to the purchaser any deposit, down payment or other payment therefor. [Acts 1985, ch. 303, § 4; T.C.A., § 47-18-404.]

Cross-References. Waiver of provisions of section void, § 66-32-312.

Section to Section References. This section is referred to in §§ 66-32-303, 66-32-312.

66-32-305. Inducements — Disclosures. — (a) It is unlawful for any person by any means, as part of an advertising program, to offer any item of value as an inducement to the recipient to visit a membership camping operator's campground, attend a sales presentation, or contact a salesperson,

unless the person clearly discloses in writing in the offer, in readily understandable language, each of the following:

(1) The name and street address of the membership camping operator;

(2) A general statement that the advertising program is made by a membership camping operator and the purpose of any requested visit, including, but not limited to, the intent to offer a sales presentation, and that an attempt will be made to induce the person to incur a monetary obligation, including the amount of any monetary obligation;

(3) A statement of the odds, in arabic numerals, of receiving each item offered, plus a statement, in arabic numerals, of the number of offers on which those odds are based, and a statement, if applicable, that those offers are not exclusive to the property within named;

(4) The approximate verifiable retail value of each item offered, which means the price at which the person offering the item can substantiate that a substantial number of these items have been sold at retail by another person or, in the event such substantiation is unavailable, no more than three (3) times the amount actually paid by the sponsor or promoter for the item and a statement that the recipient shall be allowed to choose either the item offered or cash in an amount equal to the retail value of the item, as such value is represented within the written offer; and

(5) All restrictions, qualifications, and other conditions that must be satisfied before the recipient is entitled to receive the item, including:

(A) Any deadline by which the recipient must visit the campground, attend the sales presentation, or respond in order to receive the item;

(B) The approximate duration of any normal sales presentation and tour;

(C) Any other conditions, such as a minimum age qualification, a financial qualification, or a requirement that if the recipient is married both husband and wife must be present in order to receive the item; and

(D) All other materials, rules, terms, and conditions of the offer or program.

(b) It is unlawful to make receipt of an offered prize contingent upon consent by the individual winners to allow their names to be used for promotional purposes.

(c) It is unlawful to use the names of individual winners for a promotional purpose in connection with a mailing to a third person before obtaining their express written or oral consent to such use.

(d) It is unlawful for any person making an offer subject to subsection (a), or any employee or agent of the person, to offer any item if the person knows or has reason to know that the offered item will not be available in a sufficient quantity based on the reasonably anticipated response to the offer.

(e) It is unlawful for any person making an offer subject to subsection (a), or any employee or agent of the person, to fail to provide any offered item or to fail to provide cash, if chosen by the recipient, in an amount equal to the retail value of the item, as such value is represented within the written offer, which any recipient who has responded to the offer is entitled to receive. The recipient shall be allowed to choose either the item offered or the cash.

(f)(1) If the person making an offer subject to subsection (a) is unable to provide an offered item because of limitations of supply, quantity, or quality not

reasonably foreseeable or controllable by the person making the offer and the recipient does not choose to accept cash in an amount equal to the retail value of the item, as such value is represented within the written offer, the person making the offer shall inform the recipient of the recipient's right to receive a rain check for the item offered, or shall inform the recipient of the recipient's right to at least one (1) of the following additional options:

(A) The person making the offer will provide a like item of equivalent or greater verifiable retail value or a rain check for the item. This option must be offered if the offered item is not reasonably available;

(B) The person making the offer will provide a substitute item of equivalent or greater verifiable retail value.

(2) If a rain check is provided, the person making an offer subject to subsection (a) shall, within a reasonable time, and in no event more than one hundred twenty (120) days after the raincheck is provided, deliver the agreed item to the recipient's address without additional cost or obligation to the recipient, unless the item for which the rain check is provided remains unavailable because of limitations of supply, quantity, or quality not reasonably foreseeable or controllable by the person making the offer. If the item is unavailable for these reasons, the person shall, not more than thirty (30) days after the expiration of the one-hundred-twenty-day period, deliver a like item of equal or greater value. The recipient has thirty (30) days from receipt of the delivered item to return the item and request cash in an amount equal to the retail value as represented within the written offer or the retail value represented of any substitute item offered, whichever is greater. The person making the offer shall provide payment within ten (10) days from return of the item.

(g) On the request of a recipient who has received or claims a right to receive any offered item, the person making an offer subject to subsection (a) shall show the recipient sufficient evidence verifying that the item provided matches the item randomly or otherwise selected for distribution to that recipient.

(h) It is unlawful for any person making an offer subject to subsection (a), or any employee or agent of the person, to:

(1) Misrepresent the size, quantity, or identity of any prize, gift, money, or other item of value offered;

(2) Misrepresent in any material manner the odds of receiving any particular gift, prize, amount of money, or other item of value;

(3) Label any offer a "notice of termination" or "notice of cancellation";

(4) Misrepresent, through omission or in any other material manner, the offer or program;

(5) Represent or lead a person to believe that the person is or could be a winner if the person had not won or is not eligible to win; or

(6) Represent or lead a person to believe that the person has been "selected" or is otherwise part of a select or special group when the person has not been selected or is not part of a select or special group. [Acts 1985, ch. 303, § 5; 1991, ch. 82, §§ 1-5; 1991, ch. 83, §§ 1-4; T.C.A., § 47-18-405.]

Section to Section References. This section is referred to in § 66-32-306.

66-32-306. Purchasers' remedies. — (a) A purchaser's remedy for errors in or omissions from the membership camping contract and related materials delivered to the purchaser at the time of sale or any of the disclosures required in § 47-18-405 is limited to a right of rescission and refund of the purchase price paid by the purchaser. This limitation does not apply to errors or omissions from the contract or disclosures or other requirements of this part which are a part of a scheme to willfully misstate or omit the information required.

(b) Reasonable attorney fees shall be awarded to the prevailing party in any action under this part. [Acts 1985, ch. 303, § 6; T.C.A., § 47-18-406.]

66-32-307. Prerequisites to selling membership camping contracts. — With respect to any campground in this state acquired and put into operation by a membership camping operator after July 1, 1985, the membership camping operator shall not sell membership camping contracts in this state granting the right to use such campground until one (1) of the following requirements has been satisfied:

(1) Each person holding an interest in a blanket encumbrance shall have executed and delivered a nondisturbance agreement and such agreement shall have been recorded in the real estate records of the county in which the campground is located;

(2) The financial institution providing the major hypothecation loan to the membership camping operator (the "hypothecation lender") shall have a lien on, or security interest in, the membership camping operator's interest in the campground, and the hypothecation lender shall have executed and delivered a nondisturbance agreement and recorded such agreement in the real estate records of the county in which the campground is located. In addition, each person holding an interest in a blanket encumbrance superior to the interest held by the hypothecation lender shall have executed, delivered, and recorded an instrument stating that such person shall give the hypothecation lender notice of, and at least thirty (30) days to cure, any default under the blanket encumbrance before such person commences any foreclosure action affecting the campground. For the purposes of this provision, a major hypothecation loan to a membership camping operator is a loan or line of credit secured by substantially all of the contracts receivable arising from the membership camping operator's sale of membership camping contracts;

(3) In the event the membership camping operator is selling real estate to purchasers, each person holding an interest in a blanket encumbrance shall have executed and delivered an agreement providing for periodic releases from the blanket encumbrance as real estate sales fees are paid on the debt. However, in such case, the membership camping operator shall have obtained an irrevocable letter of credit or surety bonds in favor of the holder of the blanket encumbrance insuring the completion of the roads and structural amenities which are promised for the project now being developed; or

(4) The membership campground operator whose project is subject to an underlying blanket lien or encumbrance may obtain the agreement of the lienholder to take the project, in the event of default by the developer, subject to the rights of the nondefaulting purchasers by posting a bond equal to fifty

percent (50%) of the amount owed to the lienholder, making an assignment of receivables equal to one hundred twenty-five percent (125%) of the principal amounts due to the lienholder, pledging collateral security equal to one hundred percent (100%) of the amount owed to the lienholder or entering into any other financing plan or escrow agreement acceptable to the lienholder. [Acts 1985, ch. 303, § 7; T.C.A., § 47-18-407.]

Section to Section References. This section is referred to in § 66-32-303.

66-32-308. Violations — Penalties. — (a) Any person who willfully violates any provision of this part commits a misdemeanor. It is a misdemeanor for any person in connection with the offer or sale of any camping club contracts willfully to:

(1) Make any untrue or misleading statement of a material fact, or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading;

(2) Employ any device, scheme, or artifice to defraud; or

(3) Engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

(b) No indictment or information may be returned under this part more than two (2) years after the alleged violation. [Acts 1985, ch. 303, § 8; T.C.A., § 47-18-408.]

Compiler's Notes. The misdemeanor provisions in this section may have been affected by the Criminal Sentencing Reform Act of 1989. See §§ 39-11-114, 40-35-110, 40-35-111.

Cross-References. Penalty for misdemeanor, §§ 39-11-114, 40-35-111.

66-32-309. Exemptions. — The provisions of this part shall not apply to:

(1) Mobile home parks or camping or recreational trailer parks which are open to the general public and do not solicit purchases of membership camping contracts, but rather contain only camping sites rented for per use fee;

(2) Any person who engages in the business of arranging and selling reciprocal programs and who does not own campgrounds and facilities; or

(3) Sales of time-share intervals in a time-share project which is registered under the Tennessee Time-Share Act, compiled in part 1 of this chapter. [Acts 1985, ch. 303, § 9; T.C.A., § 47-18-409.]

66-32-310. Violation of Tennessee Consumer Protection Act. — A violation of this part shall constitute a violation of the Tennessee Consumer Protection Act, as set out in title 47, chapter 18, part 1. For the purpose of application of the Tennessee Consumer Protection Act, any violation of the provisions of this part shall be construed to constitute an unfair or deceptive act or practice affecting the conduct of any trade or commerce. [Acts 1985, ch. 303, § 10; T.C.A., § 47-18-410.]

66-32-311. Retail Installment Sales Act applicable. — Membership camping contracts covered by this part shall be subject to the provisions of the Tennessee Retail Installment Sales Act, as set out in title 47, chapter 11. [Acts 1985, ch. 303, § 11; T.C.A., § 47-18-411.]

66-32-312. Void agreement — Waiver of cancellation provisions. — Any contractual agreement containing a waiver of the provisions of § 66-32-304 is contrary to public policy and is void and unenforceable. [Acts 1990, ch. 804, § 1; T.C.A., § 47-18-412.]

RULES
OF
THE TENNESSEE REAL ESTATE COMMISSION

CHAPTER 1260-6

TIME-SHARE PROGRAMS

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1260-6-.01 DEFINITIONS. For purposes of this Chapter, unless the context otherwise requires, the definitions of terms contained in the Tennessee Time-Share Act of 1981, as amended (T.C.A., Title 66, Chapter 32), shall be applicable.

Authority: *T.C.A. §§ 66-32-121 and 66-32-102.* ***Administrative History:*** *Original rule filed April 17, 1985; effective May 17, 1985.*

1260-6-.02 RECEIPT OF PUBLIC OFFERING STATEMENT. Before transfer of a time-share interval and no later than the date of any sales contract, the developer shall obtain from the purchaser a signed and dated receipt for the public offering statement (and any amendments and supplements thereto) provided in accordance with T.C.A. §66-32-112. The receipt shall specify the number of pages in the public offering statement as filed with the Commission. The developer shall retain such receipt for a period of four (4) years from the date thereof.

Authority: *T.C.A. §§ 66-32-112 and 66-32-121.* ***Administrative History:*** *Original rule filed April 17, 1985; effective May 17, 1985.*

1260-6-.03 ESCROW FUNDS.

(1) Where a developer is required by T.C.A. § 66-32-113 to pay funds received from a buyer towards the sales price of a time-share estate into an escrow account held in this state by an independent bonded escrow company or insured financial institution, the escrow agent shall not be:

(a) The developer;

(b) An employer or employee of the developer;

(c) A project broker or sales agent for any time-share property of the developer; or

(d) Any person who otherwise controls, is controlled by or is under common control with a developer.

(2) Where a developer is permitted by T.C.A. § 66-32-113 (d) to withdraw payments received from the buyer toward the sales price of a time-share estate prior to substantial completion, the developer may use such payments only to pay for construction costs of the improvements comprising the time-share project. For purposes of this rule, 'construction costs' means expenses reasonably incurred in connection with the building, furnishing, and landscaping of the time-share project, including architectural, engineering, finance, and legal fees.

(3) Each escrow agent shall maintain, in accordance with generally accepted accounting principles, separate records for each time-share project containing the following information:

(a) Name of the owner of the time-share estate.

(b) Identification of time-share interval involved.

(c) Amount and date of deposit.

(d) Amount, date, and payee of each check drawn on the trust account.

(4) The Commission or its authorized representatives may, at all reasonable hours, examine and copy such books, accounts, documents, or records as are relevant to a determination of whether a developer or escrow agent has complied with the provisions of T.C.A. § 66-32-113 and this rule.

Authority: *T.C.A. §§ 66-32-113 and 66-32-121.* ***Administrative History:*** *Original rule filed April 17, 1985; effective May 17, 1985.*

1260-6-.04 DISCLOSURE OF RESCISSION RIGHTS. The following statement shall appear in boldface and conspicuous type in:

(a) Every public offering statement; and

(b) Every contract for the sale of a time-share interval, immediately above the space reserved for the signature of the purchaser.

"You May Cancel A Contract To Purchase A Time-Share Interval Within Ten (10) Days From The Date Of The Contract, Where You Have Made An On-Site Inspection Of The Time-share Project Before Signing The Contract, And, If You Have Not Made Such An Inspection, Within Fifteen (15) Days From The Date Of The Contract. If You Elect To Cancel, You May Do So By Hand Delivering Notice To The Seller Within The Designated Period, Or By Mailing Notice To The Seller (Or His Agent For Service Of Process) By Prepaid United States Mail Postmarked Anytime Within The Designated Period."

Authority: *T.C.A. §§ 66-32-112, 66-32-114 and 66-32-121.* ***Administrative History:*** *Original ruled filed April 17, 1985; effective May 17, 1985. Amendment filed September 6, 1985; effective October 6, 1985.*

1260-6-.05 MATERIAL CHANGES.

(1) A Developer shall not intentionally cause any material change in a time-share program as represented in the public offering statement without at least ten (10) days advance notice to the Commission. As long as a developer is engaged in the offering or disposition of time-share intervals respecting a time-share program, the developer shall notify the Commission of any material change within ten (10) days from the date on which the developer first knew of it.

(2) For purposes of this rule, "material change" means a change in any information or document disclosed in or attached to a public offering statement which renders such information or document false or misleading. Without limiting the generality of the preceding sentence, a material change shall be deemed to occur whenever.

(a) The current or projected budget for the time-share intervals is revised.

(b) The scheduled commencement or completion of promised improvement in the time-share project is (or will be) delayed due to adverse financial conditions or other causes.

(3) Upon the occurrence of a material change, the Commission may, if it deems:

(a) Request that sales be voluntarily suspended by the developer pending a determination of the effect of the material change on the time-share program.

(b) Take action in accordance with T.C.A. § 66-32-121.

Authority: T.C.A. §§ 66-32-116 and 66-32-121. Administrative History: Original rule filed April 17, 1985; effective May 17, 1985.

1260-6-.06 ACQUISITION AGENTS.

(1) Each acquisition agent shall furnish on the form prescribed by the Commission the following information:

(a) Its principal office address and telephone number.

(b) The name of its responsible managing employee.

(c) The names and addresses of any affiliated individuals who will act as acquisition agents in its behalf.

(d) The time-share program(s) for which it is seeking prospective purchasers.

(e) The name and address of the developer of such time-share program(s).

(2) The acquisition agent shall promptly report to the Commissioner any change in the information submitted under this rule.

Authority: *T.C.A. §§ 66-32-121 and 66-32-122.* ***Administrative History:*** *Original rule filed April 17, 1985; effective May 17, 1985.*

1260-6-.07 SALES AGENTS.

(1) Each sales agent shall furnish on the form prescribed by the Commission the following information:

(a) Its principal office address and telephone number.

(b) the name of its responsible managing employee.

(c) The names and addresses of any affiliated individuals who will act as sales agents in its behalf.

(d) The time-share program(s) that it is selling.

(e) The name and address of the developer of such time-share program(s).

(2) The sales agent shall promptly report to the Commission any change in the information submitted under this rule.

Authority: *T.C.A. §§ 66-32-121 and 66-32-122.* ***Administrative History:*** *Original rule filed April 17, 1985; effective May 17, 1985.*

1260-6-.08 MANAGING AGENTS.

(1) Each managing agent shall furnish on the form prescribed by the Commission the following information:

(a) Its principal office address and telephone number.

(b) The name of its responsible managing employee.

(c) The time-share program(s) that it is managing.

(d) The name and address of the developer of such time-share program(s).

(e) The name and address of the financial institution in which the managing agent deposits funds collected from time-share interval owners for common expenses and maintenance repairs.

(2) the managing agent shall promptly report to the Commission any change in the information submitted under this rule.

Authority: *T.C.A. §§ 66-32-121 and 66-32-122.* ***Administrative History:*** *Original rule filed April 17, 1985; effective May 17, 1985.*

1260-6-.09 EXCHANGE AGENTS. An exchange agent may disclose the information required by T.C.A. § 66-32-122 (f), in any clear and understandable format. The exchange agent's statement shall be filed with the Commission on or before July 1 of each year.

Authority: *T.C.A. §§ 66-32-121 and 66-32-122.* ***Administrative History:*** *Original rule filed April 17, 1985; effective May 17, 1985.*

1260-6-.10 APPLICATION FOR REGISTRATION.

(1) An application for registration of a time-share program shall be executed and notarized on the form prescribed by the Commission. In addition to

the information required by T.C.A. § 66-32-123(a), the application shall include:

(a) Copies of the forms of sales contract, deed, and all other written materials to be used in the normal course of the sale of time-share intervals.

(b) Evidence of compliance with the zoning laws of the local government in which the time-share project is located.

(c) The name and address of the sales agent to be employed by the developer for the sale of time-share intervals.

(2) The developer of a time-share project not substantially completed shall also include with the application for registration:

(a) An estimate, certified by the developer and accompanied by the information or documentation upon which it is based, of the cost to complete the time-share project (as represented in the public offering statement).

(b) Sufficient evidence of financial capacity to cover such cost (e.g., financial statement; construction loan documents; etc.).

(c) A copy of any contract(s) executed for the construction of the project.

(d) A copy of the agreement under which escrow funds are held in accordance with T.C.A. § 66-32-113; or, if alternate financial assurances are obtained as provided in that Section, copies, documents relating to such assurances.

(e) Such other materials that the Commission may require to determine that the time-share project will be substantially completed.

(3) The developer of a time-share project which is subject to an underlying blanket lien or encumbrance shall also include with the application for registration copies of non-disturbance agreements, subordination agreements, lien releases, bonds, or other financial arrangements designed to protect non-defaulting purchasers in accordance with T.C.A. § 66-32-128.

Authority: *T.C.A. §§ 66-32-121 and 66-32-123.* ***Administrative History:*** *Original rule filed April 17, 1985; effective May 17, 1985.*

1260-6-.11 RENEWAL OF REGISTRATION.

(1) All registration of time-share programs shall expire on December 31 of each year, and shall be invalid after that date unless renewed.

(2) At least one (1) month in advance of the date of expiration of a registration, the Executive Director of the Commission shall notify the registrant by mail of the deadline and fee for renewal of the registration.

(3) An application for renewal of registration must be filed on or before the expiration date of the registration. The application shall explain any

changes in information or documents previously filed with the Commission; provided, however, that this paragraph shall not be construed to obviate with rule 1260-6-.05.

(4) If an application for renewal of registration of a time-share program is not timely filed, the developer must submit a new application in order to reinstate the registration.

Authority: *T.C.A. §§ 66-32-121 and 66-32-123.* ***Administrative History:*** *Original rule filed April 17, 1985; effective May 17, 1985.*

1260-6-.12 REGISTRATION FEES.

(1) The following fees shall accompany applications submitted under the Time Share Act:

(a) For the registration of any timeshare program or vacation club, a fee of seven hundred fifty dollars ($750.00);

(b) For the renewal of any time share program or vacation club, a fee of five hundred dollars ($500.00);

(c) For a request for exemption from registration, a fee of two hundred fifty dollars ($250.00);

(2) The fees charged and collected under this rule shall not be prorated, and shall not be refundable.

Authority: *T.C.A. §§ 66-32-121 and 66-32-123.* ***Administrative History:*** *Original rule filed April 17, 1985; effective May 17, 1985. Amendment filed December 8, 1999; effective February 21, 2000.*

1260-6-.13 REQUEST FOR EXEMPTION.

(1) Any developer wishing to avoid registering a time-share program involving property located outside this state on the basis of T.C.A. § 66-32-102(7) (the "no-offering" provision) shall submit a request for exemption to the Commission. The request shall be accompanied by:

(a) The public offering statement for the project; and

(b) A letter or certificate of registration from the jurisdiction in which the time-share property is located.

Authority: *T.C.A. §§ 66-32-102 and 66-32-121.* ***Administrative History:*** *Original rule filed April 17, 1985; effective May 17, 1985.*

1260-6-.14 RECORDS.

(1) The developer shall maintain the following records for a period of at least four (4) years:

(a) The names, addresses, and dates of employment (and if applicable, termination) of all persons (including acquisition agents and sales agents) employed by the developer for time-share sales purposes in the State of Tennessee.

(b) Copies of sales contracts and documentation reflecting the disposition of all purchase money received thereunder.

(c) Copies of agreements entered into with managing agents for the management of the time-share program.

(d) Copies of agreements entered into with exchange agents for the affiliation of the time-share project with an exchange program.

(2) All records required to be kept under this rule shall be made available to the Commission or its authorized representatives upon reasonable request.

Authority: *T.C.A. § 66-32-121.* ***Administrative History.*** *Original rule filed April 17, 1985; effective May 17, 1985.*

TITLE 16

COURTS

CHAPTER 15

COURTS OF GENERAL SESSIONS

SECTION.

PART 7—MISCELLANEOUS PROVISIONS

16-15-731. Actions in the nature of interpleader. — (a) Notwithstanding any rule of court or provision of law to the contrary, actions in the nature of interpleader, in which the value of the money which is the subject of the action does not exceed the jurisdictional limit of the general sessions court, may be filed in general sessions court under the provisions of this part. Any such action involving money in the custody or possession of a person acting in the capacity of a real estate broker may be filed on forms prescribed by the Tennessee real estate commission pursuant to its authority under § 62-13-203.

(b) The failure of a competing claimant to recover in an interpleader action shall not be considered as a judgment against such claimant, and shall not be used to impair the credit of such claimant. [Acts 1987, ch. 331, § 1; 1988, ch. 523, § 1; 1991, ch. 338, §§ 1, 2; 1993, ch. 241, § 49; T.C.A., § 19-1-121.]

FAIR HOUSING AND CIVIL RIGHTS

In addition to the license laws and rules and regulations, licensees should endeavor to understand fully fair housing laws of the state and federal governments. In 1978 the Tennessee Legislature passed the State Fair Housing Law. Though this law is not a part of the license law and not enforced by the Tennessee Real Estate Commission, it is important to the practice and conduct of all licensees.

In addition to the Fair Housing Act licensees should be aware that there exists substantial federal legislation relative to Civil Rights and anti-discrimination practices. Included in this legislation is the Civil Rights Act of 1968, the Fair Housing Marketing Regulations in Title 24 and Executive Order No. 11063 relative to equal opportunity in housing.

TITLE 4

STATE GOVERNMENT

CHAPTER 21

HUMAN RIGHTS

PART 1—GENERAL PROVISIONS

4-21-101. Purpose and intent. — (a) It is the purpose and intent of the general assembly by this chapter to:

(1) Provide for execution within Tennessee of the policies embodied in the federal Civil Rights Acts of 1964, 1968 and 1972, the Pregnancy Amendment of 1978, and the Age Discrimination in Employment Act of 1967, as amended;

(2) Assure that Tennessee has appropriate legislation prohibiting discrimination in employment, public accommodations and housing sufficient to justify the deferral of cases by the federal equal employment opportunity commission, the department of housing and urban development, the secretary of labor and the department of justice under those statutes;

(3) Safeguard all individuals within the state from discrimination because of race, creed, color, religion, sex, age or national origin in connection with employment, public accommodations, and because of race, color, creed, religion, sex or national origin in connection with housing;

(4) Protect their interest in personal dignity and freedom from humiliation;

(5) Make available to the state their full productive capacity in employment;

(6) Secure the state against domestic strife and unrest which would menace its democratic institutions;

(7) Preserve the public safety, health and general welfare; and

(8) Further the interest, rights, opportunities and privileges of individuals within the state.

(b) The prohibitions in this chapter against discrimination because of age in connection with employment and public accommodations shall be limited to individuals who are at least forty (40) years of age. [Acts 1978, ch. 748, § 2; T.C.A., § 4-2101; Acts 1980, ch. 732, §§ 1-4; 1984, ch. 1007, § 1; 1986, ch. 807, § 1; 1988, ch. 714, § 6.]

Compiler's Notes. This chapter was rearranged in 1985. Former §§ 4-21-103 — 4-21-133 were transferred to new locations as follows:

Former Sections	New Sections
4-21-103	4-21-201
4-21-104	4-21-202
4-21-105	4-21-401
4-21-106	4-21-402
4-21-107	4-21-403
4-21-108	4-21-404
4-21-109	4-21-405
4-21-110	4-21-406
4-21-111	4-21-501
4-21-112	4-21-502
4-21-113	4-21-503
4-21-114	4-21-301
4-21-115	4-21-302
4-21-116	4-21-303
4-21-117	4-21-304
4-21-118	4-21-305
4-21-119	4-21-306
4-21-120	4-21-307
4-21-121	4-21-308
4-21-122	4-21-309
4-21-123	4-21-310
4-21-124	4-21-311
4-21-125	4-21-407
4-21-126	4-21-407
4-21-127	4-21-601
4-21-128	4-21-602
4-21-129	4-21-603
4-21-130	4-21-604
4-21-131	4-21-605
4-21-132	4-21-606
4-21-133	4-21-607

The federal Civil Rights Act of 1964, referred to in this section, is codified in numerous sections in 42 U.S.C.

The federal Civil Rights Act of 1968, referred to in this section, is compiled at 18 U.S.C. §§ 231-233, 241, 242, 245, 1153, 2101, 2102; 25 U.S.C. §§ 1301-1303, 1311, 1312, 1321-1326, 1331, 1341; 28 U.S.C. § 1360 notes; 42 U.S.C. §§ 1973j, 3533, 3535, 3601-3619, 3631.

The Age Discrimination in Employment Act of 1967, referred to in this section, is codified at 29 U.S.C. § 621 et seq.

The Pregnancy Amendment of 1978, referred to in this section, is compiled at 42 U.S.C. § 2000e(k).

For an Order establishing the Tennessee Title VI Compliance Commission, see Executive Order No. 34 (August 9, 2002).

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Section to Section References. This chapter is referred to in § 8-30-326.

This section is referred to in § 4-21-407.

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Ga. O.C.G.A. § 34-6A-1 et seq.

Ky. Rev. Stat. Ann. § 344.010 et seq.

Mo. Rev. Stat. § 213.010 et seq.

N.C. Gen. Stat. § 143.422.1 et seq.

Va. Code § 15.1-783.1 et seq.

Cited: Russell v. Belmont College, 554 F. Supp. 667 (M.D. Tenn. 1982); Musser v. Mountain View Broadcasting, Inc., 578 F. Supp. 229 (E.D. Tenn. 1984); Hoge v. Roy H. Park Broadcasting of Tenn., Inc., 673 S.W.2d 157 (Tenn. Ct. App. 1984); Whitfield v. City of Knoxville, 756 F.2d 455 (6th Cir. 1985); Rogers v. Stratton Indus., Inc., 798 F.2d 913 (6th Cir. 1986); Boyd v. James S. Hayes Living Health Care Agency, Inc., 671 F. Supp. 1155 (W.D. Tenn. 1987); Belcher v. Sears, Roebuck & Co., 686 F. Supp. 671 (M.D. Tenn. 1988); Puckett v. Tennessee Eastman Co., 889 F.2d 1481 (6th Cir. 1989); Silpacharin v. Metropolitan Gov't, 797 S.W.2d 625 (Tenn. Ct. App. 1990); McKennon v. Nashville Banner Publishing Co., 797 F. Supp. 604 (M.D. Tenn. 1992); Easter v. Martin Marietta Energy Sys., Inc., 823 F. Supp. 489 (E.D. Tenn. 1991); Gregory v. Hunt, 24 F.3d 781, 1994 Fed. App. 159 (6th Cir. 1994); England v. Fleetguard, Inc., 878 F. Supp. 1058 (M.D. Tenn. 1995); Roberson v. University of Tenn., 912 S.W.2d 746 (Tenn. Ct. App. 1995); Thomas v. Allen-Stone Boxes, Inc., 925 F. Supp. 1316 (W.D. Tenn. 1995); Burnett v. Tyco Corp., 932 F. Supp. 1039 (W.D. Tenn. 1996); Spicer v. Beaman Bottling Co., 937 S.W.2d 884 (Tenn. 1996); Weber v. Moses, 938 S.W.2d 387 (Tenn. 1996); Watson v. Cencom Cable Income Partners, 993 F. Supp. 1149 (M.D. Tenn. 1997); Gunby v. Equitable Life Assurance Soc'y., 971 S.W.2d 7 (Tenn. Ct. App. 1997); Dobbs-Weinstein v. Vanderbilt Univ., 1 F. Supp. 2d 783 (M.D. Tenn. 1998); Lauro v. Tomkats, Inc., 9 F. Supp. 2d 863 (M.D. Tenn. 1998); Browning v. Rohm & Haas Tenn., Inc., 16 F. Supp. 2d 896 (E.D. Tenn. 1998); Damron v. Yellow Freight Sys., 18 F. Supp. 2d 812 (E.D. Tenn. 1998); Clemons v. Ford Motor Co., 57 F. Supp. 2d 469 (M.D. Tenn. 1998); Harper v. Georgia-Pacific Corp., 67 F. Supp. 2d 909 (W.D. Tenn. 1998), aff'd, 194 F.3d 1312, — Fed. App. — (6th Cir. 1999); Shapira v. Lockheed Martin Corp., 88 F. Supp. 2d 813 (E.D. Tenn. 1998); Gann v. Chevron Chemical Co., 52 F. Supp. 2d 834 (E.D. Tenn. 1999); Rogers v. AC Humko Corp., 56 F. Supp. 2d 972 (W.D. Tenn. 1999); Holmes v. FSR/Tennessee Affordable Hous. Found., 100 F. Supp. 2d 804 (W.D. Tenn. 2000); Watson v. Food Lion, Inc., 147 F. Supp. 2d 883 (E.D. Tenn. 2000); Washington v. Robertson County, 29 S.W.3d 466 (Tenn. 2000); Barnes v. Goodyear Tire & Rubber Co., 48 S.W.3d 698 (Tenn. 2000); Versa v. Policy Studies, Inc., 45 S.W.3d 575 (Tenn. Ct. App. 2000); Reed v. Cracker Barrel Old Country Store, Inc., 171 F. Supp. 2d 741 (M.D. Tenn. 2001); Jinks v. Alliedsignal, Inc., 250 F.3d 381, 2001 Fed. App. 159 (6th Cir. 2001); Coleman v. Shoney's, Inc., 145 F. Supp. 2d 934 (W.D. Tenn. 2001); Vaughn v. Lawrenceburg Power Sys., 269 F.3d 703, 2001 Fed. App. 375 (6th Cir. 2001); Jahr v. Great W. Cas. Co., — F. Supp. 2d —, 2002 U.S. Dist. LEXIS 14057 (E.D. Tenn. July 24, 2002); Cooper v. MRM Inv. Co., 199 F. Supp. 2d 771 (M.D. Tenn. 2002); Al-Sadoon v. FISI*Madison Fin. Corp., 188 F. Supp. 2d 899 (M.D. Tenn. 2002); Mountjoy v. City of Chattanooga, — S.W.3d —, 2002 Tenn. App. LEXIS 277 (Tenn. Ct. App. Apr. 23, 2002); Harbison v. Crockett County, — F. Supp. 2d —, 2003 U.S. Dist. LEXIS 5121 (W.D. Tenn. Mar. 21, 2003); Phillips v. Leroy-Somer N. Am., — F. Supp. 2d —, 2003 U.S. Dist. LEXIS 5349 (W.D. Tenn. Mar. 28, 2003).

NOTES TO DECISIONS

ANALYSIS

1. Purposes of Chapter.

One of the purposes of this chapter is to prohibit discrimination in employment and not to restrict the employer's right to make bona fide business decisions. Bruce v. Western Auto Supply Co., 669 S.W.2d 95 (Tenn. Ct. App. 1984).

2. Legislative Intent.

The clear language from the Tennessee Human Rights Act evinces an unmistakable legislative intent to remove whatever immunity the electric power board may have had under the Governmental Tort Liability Act. Rooks v. Chattanooga Elec. Power Bd., 738 F. Supp. 1163 (E.D. Tenn. 1990).

3. Chapter Not Retroactive.

Since there was nothing in this chapter which would require retroactive application, the Tennessee human rights commission was without jurisdiction to investigate plaintiff's termination. Shultz v. Dempster Sys., 561 F. Supp. 1230 (E.D. Tenn. 1983).

4. Jurisdiction.

Exercise of pendent jurisdiction by federal court over state age discrimination claim was not inappropriate as the state and federal remedies are not wholly duplicative and congress has not expressly precluded such a recovery. Cripps v. United Biscuit of Gr. Brit., 732 F. Supp. 844 (E.D. Tenn. 1989).

There is no express consent by Tennessee, either within the Tennessee Human Rights Act (THRA) or elsewhere, to suit in federal court for claims under the THRA; therefore, an action for malicious harassment against state agencies under the THRA could only be brought before the human rights commission or in chancery court. Boyd v. Tennessee State Univ., 848 F. Supp. 111 (M.D. Tenn. 1994).

The eleventh amendment of the federal constitution was an absolute bar to an employment discrimination action against the University of Tennessee under the Human Rights Act. Stefanovic v. University of Tenn., 935 F. Supp. 944 (E.D. Tenn. 1996).

Court lacked subject matter jurisdiction over a former employee's claims of race and age discrimination under the Tennessee Human Rights Act, T.C.A. §§ 4-21-101 — 4-21-903, as the employee's employer, a hospital authority, was a state entity and Tennessee had not consented to suit in the federal courts. Fitten v. Chattanooga-Hamilton County Hosp. Auth., — F. Supp. 2d —, 2002 U.S. Dist. LEXIS 26333 (E.D. Tenn. Oct. 21, 2002).

While the state has waived its immunity for Tennessee Human Rights Act (THRA), T.C.A. § 4-21-101 et seq., suits in state courts, it has not done so for suits in federal courts; the THRA provides three avenues for pursuing a claim against an employer, none of which includes suit in the federal district courts. There is no express consent by Tennessee, either within the THRA nor elsewhere, to suit in federal court for claims under the THRA. Henderson v. Southwest Tennessee Community College, — F. Supp. 2d —, 2003 U.S. Dist. LEXIS 16161 (W.D. Tenn. Sept. 16, 2003).

5. Religious Discrimination.

The reasonable accommodation of religion standard has been incorporated into Tennessee law through this legislation. DePriest v. Puett, 669 S.W.2d 669 (Tenn. Ct. App.), cert. denied, 469 U.S. 1034, 105 S. Ct. 505, 83 L. Ed. 2d 397 (1984).

6. Handicap Discrimination.

Nurse was entitled to significant damages for hospital's discriminatory discharge violative of this section based on nurse's physical handicap. Tuck v. HCA Health Servs. of Tenn., Inc., 842 F. Supp. 988 (M.D. Tenn. 1992), aff'd, 7 F.3d 465 (6th Cir. 1993).

7. Employment Discrimination.

For analysis of employment discrimination case based on racial and sexual discrimination, see Anderson v. Mead Johnson Nutritional Group, 910 F. Supp. 376 (E.D. Tenn. 1996), aff'd, 107 F.3d 870 (6th Cir. 1997).

The Tennessee Human Rights Act addresses discrimination in the formation and/or termination of contracts or business relationships. Harper v. BP Exploration & Oil Co., 896 F. Supp. 743 (M.D. Tenn. 1995), aff'd in part and remanded, 134 F.3d 371 (6th Cir. 1998).

Where company's allegedly nondiscriminatory reasons for failing to relocate plaintiff were merely pretextual and in violation of the company's policies, this action constituted purposeful racial discrimination in direct violation of 42 U.S.C. § 1981 and the Tennessee Human

Rights Act. Harper v. BP Exploration & Oil Co., 896 F. Supp. 743 (M.D. Tenn. 1995), aff'd in part and remanded, 134 F.3d 371 (6th Cir. 1998).

Terminated employee's demonstration of nearly 11 months between the time of her protected activity (taking family leave) and the time of her termination was insufficient to raise a genuine issue of retaliation under the Tennessee Human Rights Act, T.C.A. § 4-21-101 et seq. Richardson v. CVS Corp., 207 F. Supp. 2d 733 (E.D. Tenn. 2001).

Employees of a public university had the right to a jury trial in their employment discrimination suits under the state's human rights statute, as the statute did not expressly exempt that right when creating a civil cause of action for aggrieved persons. University of Tenn. of Chattanooga v. Farrow, — S.W.3d —, 2001 Tenn. App. LEXIS 615 (Tenn. Ct. App. Aug. 16, 2001).

Employee provided sufficient evidence to support a claim of age and gender discrimination under the Tennessee Human Rights Act, T.C.A. § 4-21-101(a)(1), (3), where he proved that upon his being fired, a younger female employee was immediately hired to replace him, and he additionally offered sufficient proof to raise a jury issue as to whether the employer's reason for firing him, based on alleged sexual harassment, was pretextual. Wilson v. Rubin, 104 S.W.3d 39 (Tenn. Ct. App. 2002).

Where employee who was over age forty was replaced by a thirty-seven year old woman, the employer did not discriminate in terminating the employee. The employee's employment record indicated several warnings concerning emotional outbursts and loss of composure in dealing with subordinates and employee was dismissed for unprofessional behavior and failure to provide effective leadership. Fox v. Baptist Mem'l Hosp. Tipton, — S.W.3d —, 2002 Tenn. App. LEXIS 875 (Tenn. Ct. App. Dec. 9, 2002).

Employer's motion for summary judgment was denied on a former employee's age discrimination claims under the Age Discrimination in Employment Act of 1967, 29 U.S.C. §§ 621-634, and the Tennessee Human Rights Act, T.C.A. §§ 4-21-101 et seq.; opinions of executives of the employer, coupled with the fact that the employee maintained his position for nearly 20 years, established that employee was qualified for his position, and the employee provided evidence that the reason for his termination (i.e., failure to comply with a court order and falsification of medical records by employees in his charge) was pretextual. Vital v. Life Care Ctrs. of Am., — F. Supp. 2d —, 2003 U.S. Dist. LEXIS 3827 (E.D. Tenn. Mar. 3, 2003).

Trial court reasoned that the employer did not replace the female employee, but rather that the employer eliminated the employee's job as part of a general reorganization of the company to save money; however, the employor assigned all of the employee's duties to a man at lower pay, and changed the title of the job from floor supervisor to director of operations; the employee raised genuine issues of material fact as to all four required elements of a cause of action under the Tennessee Human Rights Act, T.C.A. § 4-21-101, established a prima facie case, and summary judgment for the employer was improper. Dennis v. White Way Cleaners, L.P., — S.W.3d —, 2003 Tenn. App. LEXIS 188 (Tenn. Ct. App. Mar. 4, 2003).

Summary judgment was properly granted in favor of the employer where there was not enough evidence for the employee's claim for discrimination based upon the employee's demotion and reduction in job points; however, the trial court improperly granted summary judgment to the employer where the employee submitted sufficient evidence to establish a prima facie case and to discredit the employer's proffered explanation for the employee's termination. Chelton v. Provident Cos., — S.W.3d —, 2003 Tenn. App. LEXIS 444 (Tenn. Ct. App. June 19, 2003).

7.1. Sexual Harassment.

In determining whether challenged sexual misconduct is severe or persuasive enough to constitute actionable sexual harassment, the court should consider: (1) The frequency of the discriminatory conduct; (2) severity of the conduct; (3) whether the conduct is physically threatening or humiliating, or a mere offensive utterance; and (4) whether the conduct unreasonably interferes with an employee's work performance. Bullion v. Ford Motor Co., 60 F. Supp. 2d 765 (M.D. Tenn. 1999).

Under the Tennessee Human Rights Act, an employer is subject to vicarious liability where an employee is victimized by hostile work environment sexual harassment committed by a supervisor with immediate (or successively higher) authority over the employee. Parker v. Warren County Util. Dist., 2 S.W.3d 170 (Tenn. 1999).

Stated purpose and intent of the Tennessee Human Rights Act (THRA), Tenn. Code Ann. § 4-1-301 is to provide for execution within Tennessee of the policies embodied in the federal civil rights laws, and the analysis of claims under the THRA is the same as is used under Title VII of the Civil Rights Act of 1964, 42 U.S.C.S. § 2000e et seq.; in an action for discrimination and retaliation, the district court granted an employer's motion for summary judgment because the employee failed to show the requisite causal connection between his termination and the alleged protected activity, in this case, where the employee objected to the manner in which the employer handled a sexual harassment matter. Goldberg v. Media Gen., Inc., — F. Supp. 2d —, 2003 U.S. Dist. LEXIS 13961 (E.D. Tenn. June 18, 2003).

8. Federal Arbitration Act.

The Tennessee Human Rights Act is exempt from the provisions of the Federal Arbitration Act; and when employees sign an employment contract containing an agreement to submit any dispute with their employer to binding arbitration, they do not thereby prospectively waive the right to have their claims of sex discrimination and sexual harassment under the Human Rights Act adjudicated in federal district court. Jacobsen v. ITT Fin. Servs. Corp., 762 F. Supp. 752 (E.D. Tenn. 1991).

9. Relation to Federal Law.

Analysis of plaintiff's age discrimination claim was the same under the Tennessee Human Rights Act as under federal law. Trentham v. K-Mart Corp., 806 F. Supp. 692 (E.D. Tenn. 1991), aff'd, 952 F.2d 403 (6th Cir. 1992).

Where plaintiff's employment discrimination claim under the Pregnancy Discrimination Act was denied because she failed to establish that she was treated any differently from nonpregnant employees, her claim under the Tennessee Human Rights Act was dismissed since the analysis under the federal law would be the same under the state law. Mayberry v. Endocrinology-Diabetes Assocs., 926 F. Supp. 1315 (M.D. Tenn. 1996).

Tennessee courts may look to federal interpretation of Title VII, 42 U.S.C. § 2000(a), for guidance in enforcing Tennessee's anti-discrimination laws, but are neither bound nor limited by federal law when interpreting this chapter. Phillips v. Interstate Hotels Corp., 974 S.W.2d 680 (Tenn. 1998).

An analysis of a plaintiff's claims under the Tennessee Human Rights Act is identical to that under Title VII of the Federal Civil Rights Act. Davis v. Modine Mfg. Co., 979 S.W.2d 602 (Tenn. Ct. App. 1998).

In contrast to the Tennessee Human Rights Act, an employee may still violate the Americans with Disabilities Act if the employee can perform the essential functions of her job with a reasonable accommodation. Workman v. Frito-Lay, Inc., 165 F.3d 460, 1999 Fed. App. 17 (6th Cir. 1999).

Tennessee courts may appropriately look to decisions of federal courts construing Title VII when analyzing claims under the Tennessee Human Rights Act; these federal precedents do not, however, bind or limit Tennessee's courts in giving the fullest possible effect to Tennessee's own human rights legislation. Spann v. Abraham, 36 S.W.3d 452 (Tenn. Ct. App. 1999).

Claims under T.C.A. § 4-21-101 are governed by the same burden-shifting standards as claims under Title VII of the Civil Rights Act of 1964, 42 U.S.C.S. § 2000e et seq. Wade v. Knoxville Utils. Bd., 259 F.3d 452, 2001 Fed. App. 246 (6th Cir. 2001).

Tennessee courts have looked to federal case law applying the provisions of the federal anti-discrimination statutes as the baseline for interpreting and applying the Tennessee Human Rights Act. Newman v. Federal Express Corp., 266 F.3d 401, 2001 Fed. App. 344 (6th Cir. 2001).

For both ADEA and Title VII claims, T.C.A. § 4-21-101 provides that Tennessee is a "deferral state" that prohibits discrimination in employment based on age or race, and authorizes a state authority to grant relief. Casillas v. Federal Express Corp., 140 F. Supp. 2d 875 (W.D. Tenn. 2000).

Retaliation claims under the Age Discrimination in Employment Act, the Americans with Disabilities Act, and the Tennessee Human Rights Act are analyzed similarly to Title VII cases. Gill v. Rinker Materials Corp., — F. Supp. 2d —, 2003 U.S. Dist. LEXIS 2986 (E.D. Tenn. Feb. 24, 2003).

10. Arbitration.

The Tennessee Uniform Arbitration Act does not indicate whether claims brought under the Tennessee Human Rights Act are subject to arbitration; accordingly, plaintiffs have the right to have their claims of sex discrimination and sexual harassment adjudicated in a judicial forum rather than through arbitration. Jacobsen v. ITT Fin. Servs. Corp., 762 F. Supp. 752 (E.D. Tenn. 1991).

Plaintiff's unsuccessful attempt to submit discrimination claims to arbitration did not preclude her from bringing her claim in the federal court under Title VII of the Civil Rights Act, the Tennessee Human Rights Act, and Tennessee common law. Gray v. Toshiba Am. Consumer Prods., Inc., 959 F. Supp. 805 (M.D. Tenn. 1997).

11. Worker's Compensation Law.

In determining whether an employee's claims under the Tennessee Human Rights Act are barred by the exclusive remedy provision of the Worker's Compensation Law, § 50-6-108, a trial court must determine whether an employee's claim is based upon real discrimination or arises from employer misconduct that is a normal part of the employment relationship; § 50-6-108 will bar claims of the latter type. Harman v. Moore's Quality Snack Foods, Inc., 815 S.W.2d 519 (Tenn. Ct. App. 1991).

12. Limitations.

Section 4-21-401 and this section are an integral part of the Tennessee Human Rights Act, and a plaintiff who filed a complaint against her former employer charging sex discrimination under these sections was subject to the one-year limitations period for an action brought under the federal civil rights statutes, as provided in § 28-3-104. Bennett v. Steiner-Liff Iron & Metal Co., 826 S.W.2d 119 (Tenn. 1992).

The general savings provision of § 28-1-105 was applicable against a governmental entity,

to save an action by former city employee for race and sex discrimination. Eason v. Memphis Light, Gas & Water Div., 866 S.W.2d 952 (Tenn. Ct. App. 1993).

Where the former employee was denied a promotion in July, 2000, did did not file a complaint under the Tennessee Human Rights Act, T.C.A. § 4-21-101 et seq, until November 5, 2001, and the claims could not be preserved pursuant to the continuing violations theory, the claims were time-barred. George v. Aventis Pharm., Inc., 252 F. Supp. 2d 599 (W.D. Tenn. 2003).

Where the former employee was denied a promotion in July, 2000, and did not file his complaint including state common law causes of action for outrageous conduct and negligent supervision until November 5, 2001, the period of limitation closed and the common law claims could not be preserved pursuant to the continuing violations theory. George v. Aventis Pharm., Inc., 252 F. Supp. 2d 599 (W.D. Tenn. 2003).

13. Punitive Damages.

The Tennessee Court of Appeals does recognize punitive damages, albeit with a high burden of proof on the plaintiff. Wilkinson v. Sally Beauty Co., 896 F. Supp. 741 (M.D. Tenn. 1995).

14. Commercial Leases.

The Tennessee Human Rights Act (THRA) plainly prohibits discrimination with regard to housing accommodations or real property; a commercial lease clearly falls within the definition of "real property." Woods v. Herman Walldorf & Co., 26 S.W.3d 868 (Tenn. Ct. App. 1999).

15. Review.

A court of appeals should not review a case for whether a prima facie case had been made, but rather, whether the ultimate issue of discrimination falls in favor of the plaintiff or defendant; evidence that bears upon elements of the prima facie case can also come into play in assessing the ultimate question of discrimination. Roh v. Lakeshore Estates, Inc., 241 F.3d 491, 2001 Fed. App. 49 (6th Cir. 2001).

16. Administrative Exhaustion.

Civil service employee may bring an action under the Tennessee Human Rights Act, T.C.A. § 4-21-101 et seq., without first exhausting employee's remedies under civil service rules. Moore v. Nashville Elec. Power Bd., 72 S.W.3d 643 (Tenn. Ct. App. 2001).

There is no requirement that, once an employee has chosen to institute administrative proceedings under the civil service rules, employee must see those proceedings through to their conclusion before bringing an action under the Tennessee Human Rights Act, T.C.A. § 4-21-101 et seq. Moore v. Nashville Elec. Power Bd., 72 S.W.3d 643 (Tenn. Ct. App. 2001).

Collateral References. Application of state law to age discrimination in employment. 51 A.L.R.5th 1.

Necessity of, and what constitutes, employer's reasonable accommodation of employee's religious preference under state law. 107 A.L.R.5th 623.

When is supervisor's or coemployee's hostile environment sexual harassment imputable to employer under state law. 94 A.L.R.5th 1.

Who, other than specifically excluded persons, is "employee" under § 4(a)(1) of Age Discrimination in Employment Act of 1967 (29 USCS § 623(a)(1)). 125 A.L.R. Fed. 273.

Workers' compensation as precluding employee's suit against employer for sexual harassment in the workplace. 51 A.L.R.5th 163.

Wrongful discharge based on public policy derived from professional ethics codes. 52 A.L.R.5th 405.

4-21-102. Definitions. — As used in this chapter, unless the context otherwise requires:

(1) "Commission" means the Tennessee human rights commission;

(2) "Commissioner" means a member of the commission;

(3) "Discriminatory practices" means any direct or indirect act or practice of exclusion, distinction, restriction, segregation, limitation, refusal, denial, or any other act or practice of differentiation or preference in the treatment of a person or persons because of race, creed, color, religion, sex, age or national origin;

(4) "Employer" includes the state, or any political or civil subdivision thereof, and persons employing eight (8) or more persons within the state, or any person acting as an agent of an employer, directly or indirectly;

(5) "Employment agency" includes any person or agency, public or private, regularly undertaking with or without compensation to procure employees for an employer or to procure for employees opportunities to work for an employer and includes any person;

(6) "Familial status" means one (1) or more individuals, who have not attained eighteen (18) years of age, being domiciled with:

(A) A parent or another person having legal custody of such individual or individuals; or

(B) The designee of such parent or other person having such custody, with the written permission of such parent or other person. The protections against discrimination on the basis of familial status shall apply to any person who is pregnant or who is in the process of securing legal custody of any person who has not attained eighteen (18) years of age;

(7) "Family" includes a single individual;

(8) "Financial institution" means a bank, banking organization, mortgage company, insurance company or other lender to whom application is made for financial assistance for the purchase, lease, acquisition, construction, rehabilitation, repair, maintenance or improvements of real property, or an individual employed by or acting on behalf of any of these;

(9)(A) "Handicap" means, with respect to a person:

(i) A physical or mental impairment which substantially limits one (1) or more of such person's major life activities;

(ii) A record of having such an impairment; or

(iii) Being regarded as having such an impairment;

(B) "Handicap" does not include current, illegal use of, or addiction to, a controlled substance;

(10) "Hearing examiner" is one (1) or more persons or commissioners, designated by the commission to conduct a hearing. The commission has the sole power to determine qualifications of the hearing examiner;

(11) "Housing accommodation" includes improved and unimproved property and means a building, structure, lot or part thereof which is used or occupied, or is intended, arranged or designed to be used or occupied, as the home or residence of one (1) or more individuals;

(12) "Labor organization" includes any organization which exists for the purpose, in whole or in part, of collective bargaining or of dealing with employers concerning grievances, terms or conditions of employment, or for other mutual aid or protection in relation to employment or any agent acting for organizations;

(13) "National origin" includes the national origin of an ancestor;

(14) "Person" includes one (1) or more individuals, governments, governmental agencies, public authorities, labor organizations, corporations, legal representatives, partnerships, associations, trustees, trustees in bankruptcy, receivers, mutual companies, joint stock companies, trusts, unincorporated organizations or other organized groups of persons;

(15) "Places of public accommodation, resort or amusement" includes any place, store or other establishment, either licensed or unlicensed, which supplies goods or services to the general public or which solicits or accepts the patronage or trade of the general public, or which is supported directly or indirectly by government funds, except that:

(A) A bona fide private club is not a place of public accommodation, resort or amusement if its policies are determined solely by its members; and

(B) Its facilities or services are available only to its members and their bona fide guests;

(16) "Real estate broker" or "real estate salesperson" means an individual, whether licensed or not, who, on behalf of others, for a fee, commission, salary, or other valuable consideration, or who with the intention or expectation of receiving or collecting the same, lists, sells, purchases, exchanges, rents or leases real estate, or the improvements thereon, including options, or who negotiates or attempts to negotiate on behalf of others such activity; or who advertises or holds such individual out as engaged in such activities; or who negotiates or attempts to negotiate on behalf of others a loan secured by mortgage or other encumbrance upon a transfer of real estate, or who is engaged in the business of charging an advance fee or contracting for collection of a fee in connection with a contract whereby such individual undertakes to promote the sale, purchase, exchange, rental, or lease of real estate through its listing in a publication issued primarily for such purpose; or an individual employed by or acting on behalf of any of these;

(17) "Real estate operator" means any individual or combination of individuals, labor unions, joint apprenticeship committees, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees in bankruptcy, receivers or other legal or commercial entities, or the county or any of its agencies, that is engaged in the business of selling, purchasing, exchanging, renting or leasing real estate, or the improvements thereon, including options, or that derives income, in whole or in part, from the sale, purchase, exchange, rental or lease of real estate; or an individual employed by or acting on behalf of any of these;

(18) "Real estate transaction" includes the sale, exchange, rental or lease of real property; and

(19) "Real property" includes buildings, structures, real estate, lands, tenements, leaseholds, cooperatives, condominiums, and hereditaments, corporeal and incorporeal, or any interest in the above. [Acts 1978, ch. 748, § 3; T.C.A., § 4-2102; Acts 1980, ch. 732, § 5; 1984, ch. 1007, § 2; 1990, ch. 937, § 1; 1992, ch. 1027, § 1.]

Law Reviews. Employment Law — Carr v. United Parcel Service: Individual Liability Under the Tennessee Human Rights Act, 29 U. Mem. L. Rev. 245 (1998).

Cited: Rogers v. Stratton Indus., Inc., 798 F.2d 913 (6th Cir. 1986); Boyd v. James S. Hayes Living Health Care Agency, Inc., 671 F. Supp. 1155 (W.D. Tenn. 1987); Rooks v. Chattanooga Elec. Power Bd., 738 F. Supp. 1163 (E.D. Tenn. 1990); Cecil v. Gibson, 820 S.W.2d 361 (Tenn. Ct. App. 1991); Washington v. Robertson County, 29 S.W.3d 466 (Tenn. 2000).

NOTES TO DECISIONS

Analysis

1. "Employer."

The term "agent" within the definition of "employer" does not include an employee or

supervisor and, thus, the Human Rights Act did not allow a supervisor to be sued in his individual capacity in an action against an employer and the supervisor alleging sexual harassment. Burnett v. Tyco Corp., 932 F. Supp. 1039 (W.D. Tenn. 1996).

The "agent of an employer" language in the definition of "employer" does not impose individual liability. Carr v. UPS, 955 S.W.2d 832 (Tenn. 1997).

State judge's actions, if proven to constitute quid pro quo sexual harassment of county employee under the judge's supervision, could be imputed to the state, since it empowered the judge with the authority the judge allegedly abused in an attempt to gain sexual favors. Sanders v. Lanier, 968 S.W.2d 787 (Tenn. 1998).

1.1. "Handicap."

Cancer is an illness that may be perceived or regarded as limiting a major life activity in a substantial manner and thus qualifies as a "handicap" under the statutory definition. Forbes v. Wilson County Emergency Dist. 911 Bd., 966 S.W.2d 421 (Tenn. 1998).

The appropriate framework for analyzing a handicap discrimination claim under the Tennessee Handicap Act (THA) and the Tennessee Human Rights Act (THRA) is that the claimant must: (1) Establish qualification as an individual with a disability; (2) Show the ability to perform the essential functions of the job with or without reasonable accommodation; and (3) Show subjection to an adverse employment action on the basis of a protected disability. Barnes v. Goodyear Tire & Rubber Co., 48 S.W.3d 698 (Tenn. 2000).

The definition of handicap includes individuals perceived or "regarded" as having an impairment which substantially limits a major life activity; thus, while the impairment may not have substantially limited a major life activity, the plaintiff may be regarded as disabled if the defendant treated the plaintiff as if the impairment substantially limited a major life activity. Barnes v. Goodyear Tire & Rubber Co., 48 S.W.3d 698 (Tenn. 2000).

Employee's disability, chronic stress, which lasted no longer than seven months, did not constitute a "handicap" under T.C.A. § 4-21-102(9)(A)(i), the first prong of the statutory definition of "handicap" in that the employee admitted she was completely recovered from her chronic stress condition, thus, even if the employee could demonstrate that this stress impaired her performance of "major life activities," her own admissions could lead a jury to but one reasonable conclusion: that her condition was temporary and thus could not have served to "substantially limit" her performance of those activities. Dunn v. Sharp Mfg. Co. of Am., — F. Supp. 2d —, 2003 U.S. Dist. LEXIS 6454 (W.D. Tenn. Jan. 9, 2003).

Employee's disability, chronic stress, which lasted no longer than seven months, did not constitute a "handicap" under T.C.A. § 4-21-102(9)(A)(ii), the second prong of the statutory definition of "handicap" in that the temporary nature of the employee's alleged handicap precluded a finding that her disability or handicap "substantially limited" one of her "major life activities", therefore, there was insufficient evidence to withstand a motion for summary judgment based on the "record of impairment" definition of "handicap." Dunn v. Sharp Mfg. Co. of Am., — F. Supp. 2d —, 2003 U.S. Dist. LEXIS 6454 (W.D. Tenn. Jan. 9, 2003).

Employee's disability, chronic stress, which lasted no longer than seven months, did not constitute a "handicap" under T.C.A. § 4-21-102(9)(A)(iii), the third prong of the statutory definition of "handicap" in that the employer claimed that it did not have a mistaken belief with respect to the employee's condition and the employee admitted in her deposition that she did not know whether the employer had any mistaken beliefs about her condition; thus, there could be no genuine issue of material fact as to whether the employer had a mistaken belief regarding the employee's condition, and absent such a belief, the employee could not recover using this method. Dunn v. Sharp Mfg. Co. of Am., — F. Supp. 2d —, 2003 U.S. Dist. LEXIS 6454 (W.D. Tenn. Jan. 9, 2003).

2. "Person."

A state university fell within the definition of "person" for purposes of an action for retaliation under the Human Rights Act. Roberson v. University of Tenn., 912 S.W.2d 746 (Tenn. Ct. App. 1995).

3. "Places of Public Accommodation, Resort or Amusement."

Hotel lounge which served alcohol and provided a meeting place to socialize and dance satisfied the definition of a place of public accommodation. Phillips v. Interstate Hotels Corp., 974 S.W.2d 680 (Tenn. 1998).

Although the policies of the federal acts and the Tennessee Human Rights Act, T.C.A. § 4-21-101 et seq., were coextensive, the reach of the THRA was in no way limited by the constraints found in the federal acts; the intent of the general assembly to prohibit discrimination, as clearly articulated in the THRA, combined with the plain and unambiguous definition of "places of public accommodation" found in T.C.A. § 4-21-102(15), could result in only one conclusion, that the pizza chain was a place of public accommodation under the THRA. Arnett v. Domino's Pizza I, L.L.C., — S.W.3d —, 2003 Tenn. App. LEXIS 514 (Tenn. Ct. App. July 24, 2003).

4. Real Property.

5. —Commercial Leases.

The Tennessee Human Rights Act (THRA)

plainly prohibits discrimination with regard to housing accommodations or real property; a commercial lease clearly falls within the definition of "real property." Woods v. Herman Walldorf & Co., 26 S.W.3d 868 (Tenn. Ct. App. 1999).

6. Employment Actions.

While the impairment may not have substantially limited a major life activity, the plaintiff may be regarded as disabled if the defendant treated the plaintiff as if the impairment substantially limited a major life activity. Barnes v. Goodyear Tire & Rubber Co., 48 S.W.3d 698 (Tenn. 2000).

Some adverse employment actions are: (1) Termination of employment; (2) Demotion evidenced by a decrease in wage or salary, by a less distinguished title, or by a material loss of employment benefits; or (3) A significant reduction of material responsibilities. Barnes v. Goodyear Tire & Rubber Co., 48 S.W.3d 698 (Tenn. 2000).

A record of absenteeism may be irrelevant when addressing an ongoing qualification to perform a specific job; in determining whether an individual is a "qualified individual," courts may look to whether the level of unscheduled absenteeism was detrimental to the employer's consideration. Barnes v. Goodyear Tire & Rubber Co., 48 S.W.3d 698 (Tenn. 2000).

The claimant can establish discrimination on the basis of a protected disability under either a direct evidence method or an indirect evidence method; the former entitles the claimant to judgment unless the employer shows that an impermissible motive did not play a role in the employment decisions. Barnes v. Goodyear Tire & Rubber Co., 48 S.W.3d 698 (Tenn. 2000).

Collateral References. What constitutes private club or association not otherwise open to public that is exempt from state civil rights statute. 83 ALR5th 467.

What constitutes substantial limitation on major life activity of working for purposes of state civil rights acts. 102 A.L.R.5th 1.

Part 2—Human Rights Commission

4-21-201. Commission created — Members. — (a) There is hereby created the Tennessee human rights commission.

(b) The commission shall consist of fifteen (15) members to be appointed by the governor, five (5) of whom shall reside in each grand division of the state.

(c) All of the fifteen (15) members of the commission shall be appointed for a term of six (6) years.

(d) They shall elect one (1) as chair.

(e) The members shall be appointed on a nonpartisan basis and shall be broadly representative of employees, proprietors, trade unions, religious groups, human rights' groups and the general public.

(f) In the event of the death or resignation of a member, such member's successor shall be appointed to serve the unexpired term.

(g) The members shall be eligible for reappointment.

(h) The members are entitled to reimbursement for expenses incurred in the performance of their duties and to reasonable fees for each day of service as hearing examiners. [Acts 1978, ch. 748, §§ 4, 5; T.C.A., § 4-2103; Acts 1983, ch. 64, § 1; T.C.A., § 4-21-103.]

Compiler's Notes. The human rights commission, created by this section, terminated June 30, 2003, and is in its wind-up period, pursuant to the provisions of § 4-29-112. Wind-up is scheduled to be complete June 30, 2004. See §§ 4-29-104, 4-29-112.

Cited: Whitfield v. City of Knoxville, 756 F.2d 455 (6th Cir. 1985).

4-21-202. Powers and duties. — In the enforcement of this chapter, the commission has the power and duty to:

(1) Maintain offices in Shelby County, Davidson County, Knox County and Hamilton County and such other offices within the state as may be deemed necessary;

(2) Meet and exercise its powers within the state;

(3) Annually appoint an executive director, fix the director's compensation with the approval of the governor, and delegate any of its functions and duties to the director in the interest of efficient management of the appropriations and resources of the agency;

(4) Promote the creation of local commissions on human rights, to cooperate with state, local and other agencies, both public and private, and individuals, and to obtain upon request and utilize the services of all governmental departments and agencies;

(5) Enter into cooperative working agreements with local commissions which have enforceable ordinances, orders, or resolutions and professional staff;

(6) Cooperate with the federal equal employment opportunity commission created under § 705 of the Civil Rights Act of 1964, compiled in 42 U.S.C. § 2000e-4, and with the department of housing and urban development in enforcing the Fair Housing Act of 1968, compiled in 42 U.S.C. § 3601 et seq., in order to achieve the purposes of those acts, and with other federal and local agencies in order to achieve the purposes of this chapter;

(7) Accept and disburse gifts and bequests, grants or other payments, public or private, to help finance its activities;

(8) Accept reimbursement pursuant to § 709(b) of the Civil Rights Act of 1964, compiled in 42 U.S.C. § 2000e-8, and pursuant to § 816 of the Fair Housing Act of 1968, compiled in 42 U.S.C. § 3616, for services rendered to assist the federal equal employment opportunity commission and the department of housing and urban development;

(9) Receive, initiate, investigate, seek to conciliate, hold hearings on and pass upon complaints alleging violations of this chapter;

(10) Require answers to interrogatories, compel the attendance of witnesses, examine witnesses under oath or affirmation in person by deposition, and require the production of documents relevant to the complaint. The commission may make rules authorizing or designating any member or individual to exercise these powers in the performance of official duties;

(11) Furnish technical assistance requested by persons subject to this chapter to further their compliance with this chapter or an order issued thereunder;

(12) Make studies appropriate to effectuate the purposes and policies of this chapter and make the results thereof available to the public;

(13) Render, in accordance with the rules, regulations, policies and procedures of the state publications committee, a written report. The report may contain recommendations of the commission for legislative or other action to effectuate the purposes and policies of this chapter;

(14) Adopt, promulgate, amend and rescind rules and regulations to effectuate the purposes and provisions of this chapter, including regulations requiring the posting of notices prepared or approved by the commission;

(15) Cooperate with community, professional, civic and religious organizations, federal agencies and agencies from other states in the development of

public information programs, leadership and activities in the interest of equal opportunity and treatment of all individuals;

(16)(A) Create local or statewide advisory agencies that in its judgment will aid in effectuating the purposes of this chapter. The commission may empower these agencies to:

(i) Study and report on problems of discrimination because of race, creed, color, religion, sex, age or national origin;

(ii) Foster through community effort or otherwise, goodwill among the groups and elements of the population of the state; and

(iii) Make recommendations to the commission for the development of policies and practices that will aid in carrying out the purposes of this chapter.

(B) Members of such advisory agencies shall serve without pay, but shall be reimbursed for expenses incurred in such services. The commission may make provision for technical and clerical assistance to the advisory agencies; and

(17) Conduct tests of housing accommodations and availability through the use of staff, both full time and part time, and of volunteers to ascertain the availability of housing, both in sales and also in rentals of real property. [Acts 1978, ch. 748, § 6; 1979, ch. 422, § 25; T.C.A., § 4-2104; Acts 1980, ch. 732, § 5; 1984, ch. 1007, § 3; T.C.A., § 4-21-104; Acts 1989, ch. 6, § 3; 1990, ch. 1024, § 9; 1992, ch. 1027, § 2; 1996, ch. 1034, §§ 2, 3.]

Code Commission Notes. Acts 1993, ch. 307, § 4 provided that the rule of the state human rights commission concerning sexual harassment be published as a permanent note under this chapter. This rule, which is presently printed as 29 CFR § 1604.11, effective July 20, 1992, is as follows:

"§ 1604.11. Sexual harassment. (a) Harassment on the basis of sex is a violation of section 703 of title VII. ([1] The principles involved here continue to apply to race, color, religion or national origin.) Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

(b) In determining whether alleged conduct constitutes sexual harassment, the Commission will look at the record as a whole and at the totality of the circumstances, such as the nature of the sexual advances and the context in which the alleged incidents occurred. The determination of the legality of a particular action will be made from the facts, on a case by case basis.

(c) Applying general title VII principles, an employer, employment agency, joint apprenticeship committee or labor organization (hereinafter collectively referred to as "employer") is responsible for its acts and those of its agents and supervisory employees with respect to sexual harassment regardless of whether the specific acts complained of were authorized or even forbidden by the employer and regardless of whether the employer knew or should have known of their occurrence. The Commission will examine the circumstances of the particular employment relationship and the job functions performed by the individual in determining whether an individual acts in either a supervisory or agency capacity.

(d) With respect to conduct between fellow employees, an employer is responsible for acts of sexual harassment in the workplace where the employer (or its agents or supervisory employees) knows or should have known of the conduct, unless it can show that it took immediate and appropriate corrective action.

(e) An employer may also be responsible for the acts of non-employees, with respect to sexual harassment of employees in the workplace, where the employer (or its agents or supervisory employees) knows or should have known of the conduct and fails to take immediate and appropriate corrective action. In reviewing these cases the Commission will consider the extent of the employer's control and any other legal responsibility which the employer may

have with respect to the conduct of such nonemployees.

(f) Prevention is the best tool for the elimination of sexual harassment. An employer should take all steps necessary to prevent sexual harassment from occurring, such as affirmatively raising the subject, expressing strong disapproval, developing appropriate sanctions, informing employees of their right to raise and how to raise the issue of harassment under title VII, and developing methods to sensitize all concerned.

(g) Other related practices: Where employment opportunities or benefits are granted because of an individual's submission to the employer's sexual advances or requests for sexual favors, the employer may be held liable for unlawful sex discrimination against other persons who were qualified for but denied that employment opportunity or benefit."

Compiler's Notes. This section may be affected by § 9-1-116, concerning entitlement to funds, absent appropriation.

Law Reviews. Age Discrimination: A Growth Industry (Charles H. Anderson), 25 No. 6 Tenn. B.J. 24 (1989).

Political Correctness Askew: Excesses in the Pursuit of Minds and Manners (Kenneth Lasson), 63 Tenn. L. Rev. 689 (1996).

What Part of "No" Don't You Understand?: Recent Developments in Workplace Sexual Harassment Law (William D. Evans Jr.), 36 No. 5 Tenn. B.J. 14 (2000).

Attorney General Opinions. Effect of 1996 legislation regarding the executive director, OAG 97-090 (5/30/97).

Tennessee human rights commission — Authority to investigate "improper administration of justice," OAG 99-192 (9/28/99).

Cited: Whitfield v. City of Knoxville, 756 F.2d 455 (6th Cir. 1985); Belcher v. Sears, Roebuck & Co., 686 F. Supp. 671 (M.D. Tenn. 1988).

NOTES TO DECISIONS

ANALYSIS

1. Worksharing agreement.
2. Limitations.

1. Worksharing Agreement.

The human rights commission has the right under Tennessee law to enter into a worksharing agreement with the EEOC for the purpose of effectively and efficiently enforcing Title VII; the EEOC can thus, in certain situations defined by the worksharing agreement, become the "person designated" to investigate the matter pursuant to § 4-21-302(b). EEOC v. Dillard Dep't Stores, Inc., 768 F. Supp. 1247 (W.D. Tenn. 1991).

By filing his charge with the state human rights commission — which, under a worksharing agreement between the agencies, acted as agent for the equal employment opportunity commission (EEOC), and vice versa — complainant simultaneously filed his charge with the EEOC. Brown v. Crowe, 963 F.2d 895 (6th Cir. 1992).

2. Limitations.

The doctrine of equitable tolling applied, where, through no fault of the plaintiff, procedural errors of the human rights commission would otherwise have defeated the plaintiff's right to litigate his case. Brown v. Crowe, 963 F.2d 895 (6th Cir. 1992).

Collateral References. Workers' compensation as precluding employee's suit against employer for sexual harassment in the workplace. 51 A.L.R.5th 163.

PART 3—VIOLATIONS—PROCEDURES

4-21-301. Discriminatory practices. — It is a discriminatory practice for a person or for two (2) or more persons to:

(1) Retaliate or discriminate in any manner against a person because such person has opposed a practice declared discriminatory by this chapter or because such person has made a charge, filed a complaint, testified, assisted or participated in any manner in any investigation, proceeding or hearing under this chapter;

(2) Aid, abet, incite, compel or command a person to engage in any of the acts or practices declared discriminatory by this chapter;

(3) Willfully interfere with the performance of a duty or the exercise of a power by the commission or one (1) of its members or representatives;

(4) Willfully obstruct or prevent a person from complying with the provisions of this chapter or an order issued thereunder; or

(5) Violate the terms of a conciliation agreement made pursuant to this chapter. [Acts 1978, ch. 748, § 16; T.C.A., §§ 4-2114, 4-21-114.]

Law Reviews. Confusion over "Comparables": Will the Sixth Circuit Stick to One Standard with Respect to "Similarly Situated" Employees? (David L. Hudson Jr.), 37 No. 11 Tenn. B.J. 25 (2001).

Effects of the Sutton Trilogy, 68 Tenn. L. Rev. 705 (2001).

Employment Law — Carr v. United Parcel Service: Individual Liability Under the Tennessee Human Rights Act, 29 U. Mem. L. Rev. 245 (1998).

Employees' Assumption of Risk: Real or Illusory Choice?, 52 Tenn. L. Rev. 35 (1984).

FMLA Notice Requirements and the Chevron Test: Maintaining a Hard-Fought Balance, 55 Vand. L. Rev. 261 (2002).

Perceived Disabilities, Social Cognition, and "Innocent Mistakes," 55 Vand. L. Rev. 481 (2002).

Proving an Employer's Intent: Disparate Treatment Discrimination and the Stray Remarks Doctrine After Reeves v. Sanderson Plumbing Products, 55 Vand. L. Rev. 219 (2002).

The Faragher and Ellerth Problem: Lower Courts' Confusion Regarding the Definition of "Supervisor," 54 Vand. L. Rev. 123 (2001).

When Telling the Truth Costs You Your Job: Tennessee's Employment-at-Will Doctrine and the Need for Change (Chad E. Wallace), 39 No. 4 Tenn. B.J. 18 (2003).

Attorney General Opinions. Tennessee human rights commission — Authority to investigate "improper administration of justice," OAG 99-192 (9/28/99).

Cited: Belcher v. Sears, Roebuck & Co., 686 F. Supp. 671 (M.D. Tenn. 1988); Bennett v. Steiner-Liff Iron & Metal Co., 714 F. Supp. 895 (M.D. Tenn. 1989); Wilmer v. Tennessee Eastman Co., 919 F.2d 1160 (6th Cir. 1990); Cecil v. Gibson, 820 S.W.2d 361 (Tenn. Ct. App. 1991); Roberson v. University of Tennessee, 829 S.W.2d 149 (Tenn. Ct. App. 1992); England v. Fleetguard, Inc., 878 F. Supp. 1058 (M.D. Tenn. 1995); Heyliger v. State Univ. & Community College Sys., 126 F.3d 849, 1997 Fed. App. 297 (6th Cir. 1997); Kirchner v. Mitsui & Co. (U.S.A.), 184 F.R.D. 124 (M.D. Tenn. 1998); Anderson v. Save-A-Lot Ltd., 989 S.W. 2d 277 (Tenn. 1999); Washington v. Robertson County, 29 S.W.3d 466 (Tenn. 2000); Mountjoy v. City of Chattanooga, — S.W.3d —, 2002 Tenn. App. LEXIS 277 (Tenn. Ct. App. Apr. 23, 2002).

NOTES TO DECISIONS

Analysis

1. Constitutionality.

The procedural and enforcement provisions of this part do not violate the principle of separation of powers, the constitutional guarantee of the right to trial by jury or the constitutional provisions pertaining to the election of state judges. Plasti-Line v. Tennessee Human Rights Comm'n, 746 S.W.2d 691 (Tenn. 1988).

2. Employment.

It is possible that some contractual right might accrue to an employee as the result of an unlawful termination of a contract of employment. Without a clear contract under which such rights may vest, however, employees in Tennessee possess no property right in their employment. Bennett v. Steiner-Liff Iron & Metal Co., 826 S.W.2d 119 (Tenn. 1992).

A contract of employment for a definite term may not be terminated before the end of the term, except for good cause or by mutual agreement, unless the right to do so is reserved in the contract. Bennett v. Steiner-Liff Iron & Metal Co., 826 S.W.2d 119 (Tenn. 1992).

This provision is integrally connected to the types of discrimination the Tennessee Human Rights Act, T.C.A. § 4-21-101 et seq., has specifically forbidden, and marital status is not included in the list of forbidden employment classifications. Vaughn v. Lawrenceburg Power Sys., 269 F.3d 703, 2001 Fed. App. 375 (6th Cir. 2001).

Although an employee established prima facie case of race and age discrimination as to one promotion the employee was not awarded, the employer had a legitimate reason, an agreement with a union, for placing another employee in the position, and the employee failed to show that the reason was pretextual, and as to other promotions, no prima facie case of discrimination was shown because the employee was not qualified for the positions in the

first place. Anthony v. Btr Auto. Sealing Sys., — F.3d —, — Fed. App. —, 2003 U.S. App. LEXIS 16264 (6th Cir. Aug. 8, 2003).

2.5 Retaliation Generally.

Defendants' Fed. R. Civ. P. 12(b)(6) motion to dismiss the employee's Age Discrimination in Employment, Americans with Disabilities Act, and Tennessee Human Rights Act retaliation claim was denied because the anti-retaliation provisions of those statutes could not be exclusively limited to adverse actions that are changes in the employment relationship. Gill v. Rinker Materials Corp., — F. Supp. 2d —, 2003 U.S. Dist. LEXIS 2986 (E.D. Tenn. Feb. 24, 2003).

Police officers' subjective interpretation of their transfer and demotion did not prove that the city manager's reason for the action, his belief that they could not work cohesively under the supervision of a new head of detectives, was pretextual. Miller v. City of Murfreesboro, — S.W.3d —, 2003 Tenn. App. LEXIS 482 (Tenn. Ct. App. July 2, 2003).

3. Retaliatory Discharge.

In order to establish a prima facie case of retaliatory discharge, plaintiff must prove: plaintiff engaged in a protected activity; the exercise of plaintiff's protected civil rights was known to defendant; defendant thereafter took an employment action adverse to plaintiff; and there was a causal connection between the protected activity and the adverse employment action. Newsom v. Textron Aerostructures, 924 S.W.2d 87 (Tenn. Ct. App. 1995).

In an action alleging discharge in retaliation for plaintiff's filing an age discrimination lawsuit, where there was no evidence that created a factual dispute as to whether defendant's stated discharge grounds were merely a pretext for terminating defendant, grant of summary judgment was proper. Newsom v. Textron Aerostructures, 924 S.W.2d 87 (Tenn. Ct. App. 1995).

4. "Person" Defined.

A state university fell within the definition of "person" for purposes of an action for retaliation under the Human Rights Act. Roberson v. University of Tenn., 912 S.W.2d 746 (Tenn. Ct. App. 1995).

5. Aiding and abetting.

An individual who aids, abets, incites, compels, or commands an employer to engage in employment-related discrimination has violated the Human Rights Act. Carr v. UPS, 955 S.W.2d 832 (Tenn. 1997).

A coworker, in the case of claims based on hostile work environment, could not be held individually liable for aiding and abetting an employer's violation in the absence of evidence that the coworker had any supervisory authority or encouraged the employer not to take corrective action. Carr v. UPS, 955 S.W.2d 832 (Tenn. 1997).

Supervisors, in the case of claims based on hostile work environment, could not be held individually liable for aiding and abetting an employer's violation in the absence of allegations that they encouraged or prevented the employer from taking corrective action. Carr v. UPS, 955 S.W.2d 832 (Tenn. 1997).

In the absence of allegations that supervisors utilized actual or apparent authority to obtain "sexual favors," claims against them were classified as supervisors failing to prevent the misconduct of a subordinate, and they could not be held individually liable as aiders and abettors based on their mere failure to act. Carr v. UPS, 955 S.W.2d 832 (Tenn. 1997).

Employee's Tennessee Human Rights Act, T.C.A. § 4-21-101 et seq., claim survived summary judgment; defendant sheriff could be liable as an individual for aiding and abetting sexual harassment, where the employee alleged the sheriff threatened and stalked the employee. Harbison v. Crockett County, — F. Supp. 2d —, 2003 U.S. Dist. LEXIS 5121 (W.D. Tenn. Mar. 21, 2003).

6. Compel or Command.

Employee failed to establish that the employee was compelled by employer to violate § 4-21-501 where the employee was instructed to play music in a hotel lounge that would induce black patrons to leave, since an establishment's music selection cannot serve as grounds for a discrimination action under this chapter. Phillips v. Interstate Hotels Corp., 974 S.W.2d 680 (Tenn. 1998).

7. Willful Obstruction.

T.C.A. § 4-21-304(4) addresses the situation in which a "person's" conduct renders another's ability to comply with this chapter an impossibility. Phillips v. Interstate Hotels Corp., 974 S.W.2d 680 (Tenn. 1998).

8. Elements of Claim.

Whether a retaliatory discharge claim is brought pursuant to this chapter or under federal law, a plaintiff must prove the same four elements: (1) That the plaintiff engaged in an activity protected by the statute; (2) That the defendant had knowledge of the plaintiff's exercise of protected activity; (3) That the defendant thereafter took an employment action adverse to the plaintiff; and (4) That a causal connection existed between the protected activity and the adverse employment action. Austin v. Shelby County Gov't, 3 S.W.3d 474 (Tenn. Ct. App. 1999).

In order to state a claim for retaliation under the Age Discrimination in Employment Act, the Americans with Disabilities Act, and the Tennessee Human Rights Act, a plaintiff must show that: (1) He engaged in protected activity; (2) The exercise of protected rights was known

to the defendants; (3) The defendants thereafter took adverse employment action; and (4) There was a causal connection between the protected activity and the adverse employment action. Gill v. Rinker Materials Corp., — F. Supp. 2d —, 2003 U.S. Dist. LEXIS 2986 (E.D. Tenn. Feb. 24, 2003).

9. Sufficiency of Evidence.

A single, isolated comment or belief that one member of management held several years prior to employee's layoff would probably be insufficient direct evidence of age discrimination. Jinks v. Alliedsignal, Inc., 250 F.3d 381, 2001 Fed. App. 159 (6th Cir. 2001).

Without evidence that employee's work environment was subjectively hostile, employee failed to establish a prima facie case of hostile work environment based on race. Newman v. Federal Express Corp., 266 F.3d 401, 2001 Fed. App. 344 (6th Cir. 2001).

Collateral References. Necessity of, and what constitutes, employer's reasonable accommodation of employee's religious preference under state law. 107 A.L.R.5th 623.

Effectiveness of employer's disclaimer or representations in personnel manual or employee handbook altering at-will employment relationship. 17 A.L.R.5th 1.

Necessity of, and what constitutes, employer's reasonable accommodation of employee's religious preference under state law. 107 A.L.R.5th 623.

What constitutes substantial limitation on major life activity of working for purposes of state civil rights acts. 102 A.L.R.5th 1.

4-21-302. Complaints — Consideration by commission. — (a) A person claiming to be aggrieved by a discriminatory practice, or a member of the commission may file with the commission a written sworn complaint stating that a discriminatory practice has been committed, setting forth the facts sufficient to enable the commission to identify the persons charged (hereinafter the respondent). Within ten (10) days after receipt of the complaint, the commission shall serve on the complainant a notice acknowledging the filing of the complaint and informing the complainant of the respondent's time limits and choice of forums under this chapter.

(b) The commission staff, or a person designated pursuant to its rules, shall promptly investigate the matter to determine whether the discriminatory practice exists and shall within ten (10) days furnish the respondent with a copy of the complaint and a notice advising the respondent of the respondent's procedural rights and obligations under this chapter.

(c) The complaint must be filed within one hundred eighty (180) days after the commission of the alleged discriminatory practice.

(d)(1) The commission staff, or a person designated pursuant to its rules, shall commence an investigation of the complaint within thirty (30) days after the filing of the complaint. The commission staff, or designee, shall promptly investigate the matter to determine whether the discriminatory practice exists.

(2) If it is determined that there is no reasonable cause to believe that the respondent has engaged in a discriminatory practice, the commission shall furnish a copy of the order to the complainant, the respondent, and such public officers and persons as the commission deems proper.

(e)(1) The complainant, within thirty (30) days after receiving a copy of the order dismissing the complaint, may file with the commission an application for reconsideration of the order.

(2) Upon such application, the commission or an individual designated pursuant to its rules shall make a new determination within thirty (30) days

whether there is reasonable cause to believe that the respondent has engaged in a discriminatory practice.

(3) If it is determined that there is no reasonable cause to believe that the respondent has engaged in a discriminatory practice, the commission shall issue an order dismissing the complaint after reconsideration, and furnishing a copy of the order to the complainant, the respondent, and such public officers and persons as the commission deems proper. [Acts 1978, ch. 748, § 17; T.C.A., §§ 4-2115, 4-21-115; Acts 1992, ch. 1027, §§ 3, 4.]

Section to Section References. Sections 4-21-302 — 4-21-311 are referred to in § 8-50-103.

This section is referred to in §§ 4-21-302, 4-21-905.

Law Reviews. Employment Law — Carr v. United Parcel Service: Individual Liability Under the Tennessee Human Rights Act, 29 U. Mem. L. Rev. 245 (1998).

Attorney General Opinions. The human rights commission has authority to process complaints alleging violations of T.C.A. § 4-21-904, which includes the authority to investigate such complaints under T.C.A. § 4-21-302; the commission is also authorized to review complaints filed with state agencies under T.C.A. § 4-21-905 to determine whether Title VI of the Federal Civil Rights Act of 1964, 42 U.S.C. § 2000d et seq., is applicable, OAG 00-107 (6/12/00).

Cited: Russell v. Belmont College, 554 F. Supp. 667 (M.D. Tenn. 1982); DePriest v. Puett, 669 S.W.2d 669 (Tenn. Ct. App. 1984); Bennett v. Steiner-Liff Iron & Metal Co., 826 S.W.2d 119 (Tenn. 1992); England v. Fleetguard, Inc., 878 F. Supp. 1058 (M.D. Tenn. 1995).

NOTES TO DECISIONS

Analysis

1. Employment discrimination.
2. —Initiation of proceedings.
3. —Statutes of limitation.
4. Election of remedies.
5. Person designated to investigate.

1. Employment Discrimination.

2. —Initiation of Proceedings.

Tennessee law provides three ways in which a victim of alleged employment discrimination may proceed; first of all, he may file administratively through the Tennessee human rights commission, which filing must be done within 180 days of the alleged discriminatory act; if the victim chooses the administrative route, the second way to proceed would follow the final decision of the commission, which would be to file a complaint with the chancery court to review the decision of the administrative agency; and the third way to proceed is to file a direct action in the chancery court. Hoge v. Roy H. Park Broadcasting of Tenn., Inc., 673 S.W.2d 157 (Tenn. Ct. App. 1984).

3. —Statutes of Limitation.

An action alleging age discrimination in employment, which was filed as a direct action in the chancery court, was an action alleging in substance a federal civil rights statutory violation, and the statute of limitations in § 28-3-104 applied, rather than either the limitations in this section or the limitations in the federal act. Hoge v. Roy H. Park Broadcasting of Tenn., Inc., 673 S.W.2d 157 (Tenn. Ct. App. 1984).

Section 28-3-104, the general statute of limitations for claims asserting a violation of federal civil rights, is applicable under § 4-21-311. Puckett v. Tennessee Eastman Co., 889 F.2d 1481 (6th Cir. 1989).

Where plaintiff brought her claim by the administrative route set forth in this section, followed it through to the conciliation stage, and did not file a complaint in circuit court until after expiration of the limitations period under § 28-3-104, the court action was barred. Puckett v. Tennessee Eastman Co., 889 F.2d 1481 (6th Cir. 1989).

The one year limitations period for bringing a direct court action under § 4-21-311 was not tolled during the pendency of administrative charges filed with the Tennessee Human Rights Commission. Burnett v. Tyco Corp., 932 F. Supp. 1039 (W.D. Tenn. 1996).

4. Election of Remedies.

The anti-discrimination act forces an election between the administrative and judicial remedy, at least where an aggrieved individual has initiated the administrative process and pursued it to an administrative conclusion; once the administrative process has been pursued past the initial administrative conclusion that no actionable violation exists, the only way to get to court is through an administrative appeal. Puckett v. Tennessee Eastman Co., 889 F.2d 1481 (6th Cir. 1989).

5. Person Designated to Investigate.

The human rights commission has the right under Tennessee law to enter into a

worksharing agreement with the EEOC for the purpose of effectively and efficiently enforcing Title VII; the EEOC can thus, in certain situations defined by the worksharing agreement, become the "person designated" to investigate the matter pursuant to subsection (b). EEOC v. Dillard Dep't Stores, Inc., 768 F. Supp. 1247 (W.D. Tenn. 1991).

4-21-303. Conciliation agreements — Temporary relief. — (a) If the staff determines after investigation, or if the commission or its delegate determines after the review provided for in § 4-21-302 that there is reasonable cause to believe that the respondent has engaged in a discriminatory practice, the commission staff shall endeavor to eliminate the alleged discriminatory practices by conference, conciliation and persuasion.

(b) The terms of a conciliation agreement reached with a respondent shall require the respondent to refrain from discriminatory practices in the future, and shall make such further provisions as may be agreed upon between the commission or its assigned staff and the respondent.

(c) If a conciliation agreement is entered into, the commission shall issue and serve on the complainant an order stating its terms. A copy of the order shall be delivered to the respondent, and such public officers and persons as the commission deems proper.

(d) Except for the terms of the conciliation agreement, neither the commission nor any officer or employee thereof shall make public, without the written consent of the complainant and the respondent, information concerning efforts in a particular case to eliminate discriminatory practice by conference, conciliation or persuasion, whether or not there is a determination of reasonable cause or a conciliation agreement. The conciliation agreement itself shall be made public unless the complainant and the respondent otherwise agree, and the commission also determines that disclosure is not required to further the purposes of this chapter.

(e) At the expiration of one (1) year from the date of a conciliation agreement, and at other times in its reasonable discretion, the commission staff may investigate whether the terms of the agreement have been and are being complied with by the respondent.

(f) Upon finding that the terms of the agreement are not being complied with by the respondent, the commission shall take such action as it deems appropriate to assure compliance.

(g) At any time after a complaint is filed, the commission may file an action in the chancery court or circuit court in a county in which the subject of the complaint occurs, or in a county in which a respondent resides or has the respondent's principal place of business, seeking appropriate temporary relief against the respondent, pending final determination of proceedings under the chapter, including an order or decree restraining such respondent from doing or procuring any act tending to render ineffectual any order the commission may enter with respect to the complaint. The court has the power to grant such temporary relief or restraining order as it deems just and proper. [Acts 1978, ch. 748, § 18; T.C.A., §§ 4-2116, 4-21-116; Acts 1992, ch. 1027, § 5; 1996, ch. 777, § 1.]

Cited: Burnett v. Tyco Corp., 932 F. Supp. 1039 (W.D. Tenn. 1996).

4-21-304. Hearings. — (a) In complaints involving discrimination in employment and public accommodations, within ninety (90) days after an administrative determination of reasonable cause to believe that discrimination took place, unless the commission has issued an order stating the terms of a conciliation agreement, or in those cases in which the terms of a conciliation agreement have been kept confidential, has issued an order stating that the case has been satisfactorily conciliated, the commission shall serve on the respondent by mail or in person a written notice, together with a copy of the complaint as it may have been amended, or a copy of the letter of determination, requiring the respondent to answer the allegation of the complaint at a hearing before a hearing examiner or hearing examiners, or another individual pursuant to its rules, at a time and place specified by the hearing examiner or examiners after conference with the parties or their attorneys. A copy of the notice shall be furnished to the complainant, and such public officers and persons as the commission deems proper. In complaints involving housing discrimination only, if the commission has determined that there is reasonable cause to believe that the respondent has engaged in a discriminatory housing practice, and if the complaint has not been resolved through a conciliation agreement, and if neither party has made an election for a civil action pursuant to § 4-21-312 within ninety (90) days after the complaint is filed, the commission shall commence a hearing in accordance with the provisions of this subsection. All hearings conducted under this section shall be conducted in accordance with the Uniform Administrative Procedures Act, compiled in chapter 5, part 3 of this title.

(b) A member of the commission who filed the complaint or endeavored to eliminate the alleged discriminatory practice by conference, conciliation or persuasion shall not participate in the hearing or in the subsequent deliberation of the commission.

(c) The respondent may file an answer with the commission by registered or certified mail in accordance with the rules of the commission before the hearing date. The respondent may amend an answer at any time prior to the issuance of an order based on the complaint, but no order shall be issued unless the respondent has had an opportunity of a hearing on the complaint or amendment on which the order is based.

(d) A respondent, who has filed an answer or whose default in answering has been set aside for good cause shown, may appear at the hearing with or without representation, may examine and cross-examine witnesses and the complainant, and may offer evidence.

(e) The complainant and the complainant's private attorney, and, in the discretion of the commission, any person, may intervene, examine, and cross-examine witnesses, and present evidence.

(f) If the respondent fails to answer the complaint, the commission may enter the respondent's default. Unless the default is set aside for good cause shown, the hearing may proceed on the evidence in support of the complaint.

(g) Efforts at conference, conciliation and persuasion shall not be received in evidence.

(h) Testimony taken at the hearing shall be under oath and transcribed. If the testimony is not taken before the commission, the record shall be transmitted to the commission.

(i) In a proceeding under this chapter, the production of a written, printed or visual communication, advertisement or other form of publication, or a written inquiry, or record, or other document purporting to have been made by a person shall be prima facie evidence that it was authorized by the person. [Acts 1978, ch. 748, § 19; 1979, ch. 422, § 26; T.C.A., §§ 4-2117, 4-21-117; Acts 1992, ch. 1027, § 6.]

Section to Section References. This section is referred to in § 4-21-307.

Law Reviews. Note, The Proper Scope of Nonlawyer Representation in State Administrative Proceedings: A State Specific Balancing Approach, 43 Vand. L. Rev. 245 (1990).

Cited: England v. Fleetguard, Inc., 878 F. Supp. 1058 (M.D. Tenn. 1995); Burnett v. Tyco Corp., 932 F. Supp. 1039 (W.D. Tenn. 1996).

4-21-305. Findings and orders. — (a) If the commission determines that the respondent has not engaged in a discriminatory practice, the commission shall state its findings of fact and conclusions of law and shall issue an order dismissing the complaint. A copy of the order shall be delivered to the complainant, the respondent, and such public officers and persons as the commission deems proper.

(b) If the commission determines that the respondent has engaged in a discriminatory practice, the commission shall state its findings of fact and conclusions of law and shall issue an order requiring the respondent to cease and desist from the discriminatory practice and to take such affirmative action as in the judgment of the commission will carry out the purposes of this chapter. A copy of the order shall be delivered to the respondent, the complainant, and to such public officers and persons as the commission deems proper. [Acts 1978, ch. 748, § 20; T.C.A., §§ 4-2118, 4-21-118.]

Cited: England v. Fleetguard, Inc., 878 F. Supp. 1058 (M.D. Tenn. 1995); Burnett v. Tyco Corp., 932 F. Supp. 1039 (W.D. Tenn. 1996).

4-21-306. Remedies. — (a) Affirmative action ordered under this section may include, but is not limited to:

(1) Hiring, reinstatement or upgrading of employees with or without back pay. Interim earnings or amounts earnable with reasonable diligence by the person or persons discriminated against shall operate to reduce the back pay otherwise allowable;

(2) Admission or restoration of individuals to union membership, admission to, or participation in, a guidance program, apprenticeship, training program, on-the-job training program, or other occupational training or retraining program, and the utilization of objective criteria in the admission of individuals to such programs;

(3) Admission of individuals to a place of public accommodation, resort or amusement;

(4) The extension to all individuals of the full and equal enjoyment of the advantages, facilities, privileges and services of the respondent;

(5) Reporting as to the manner of compliance;

(6) Posting notices in conspicuous places in the respondent's place of business in the form prescribed by the commission and inclusion of such notices in advertising material;

(7) Payment to the complainant of damages for an injury, including humiliation and embarrassment, caused by the discriminatory practice, and cost, including a reasonable attorney's fee;

(8) Such other remedies as shall be necessary and proper to eliminate all the discrimination identified by the evidence submitted at the hearing or in the record; and

(9) In cases involving discriminatory housing practices only, payment by the respondent of a civil penalty:

(A) In an amount not exceeding ten thousand dollars ($10,000) if the respondent has not been adjudged to have committed any prior unlawful discriminatory housing practices;

(B) In an amount not exceeding twenty-five thousand dollars ($25,000) if the respondent has been adjudged to have committed one (1) other unlawful discriminatory housing practice during the five-year period ending on the date of the filing of the complaint; or

(C) In an amount not exceeding fifty thousand dollars ($50,000) if the respondent has been adjudged to have committed two (2) or more unlawful discriminatory housing practices during the seven-year period ending on the date of the filing of the complaint.

If the acts constituting the discriminatory housing practice that is the object of the complaint are committed by the same natural person who has been previously adjudged to have committed acts constituting an unlawful discriminatory housing practice, then the civil penalties set forth in subdivisions (a)(9)(B) and (C) may be imposed without regard to the period of time within which any subsequent discriminatory housing practice occurred.

(b) The commission may publish, or cause to be published, the names of persons who have been determined to have engaged in a discriminatory practice. [Acts 1978, ch. 748, §§ 21; T.C.A., §§ 4-2119, 4-21-119; Acts 1992, ch. 1027, § 7.]

Cross-References. Additional remedies preserved, § 4-21-311.

Section to Section References. This section is referred to in § 4-21-311.

Law Reviews. Age Discrimination: A Growth Industry (Charles H. Anderson), 25 No. 6 Tenn. B.J. 24 (1989).

Election of Remedies in Tennessee: Making the Right Choices (Steven W. Feldman), 37 No. 1 Tenn. B.J. 14 (2001).

Employment Law — Carr v. United Parcel Service: Individual Liability Under the Tennessee Human Rights Act, 29 U. Mem. L. Rev. 245 (1998).

Note, Do State Fair Employment Statutes by "Negative Implication" Preclude Common-Law Wrongful Discharge Claims Based on the Public Policy Exception?, 21 Mem. St. U.L. Rev. 527 (1991).

Cited: Harman v. Moore's Quality Snack Foods, Inc., 815 S.W.2d 519 (Tenn. Ct. App. 1991); Burnett v. Tyco Corp., 932 F. Supp. 1039 (W.D. Tenn. 1996); Mountjoy v. City of Chattanooga, — S.W.3d —, 2002 Tenn. App. LEXIS 277 (Tenn. Ct. App. Apr. 23, 2002).

NOTES TO DECISIONS

Analysis

1. Judicial action.
1.1. Election of remedies.
2. Punitive damages.
3. Attorney's fees.
4. Relationship to workers' compensation law.

1. Judicial Action.

Claimants who pursued a judicial action, like those who chose to pursue an administrative complaint, enjoyed the remedies enumerated in

this section. England v. Fleetguard, Inc., 878 F. Supp. 1058 (M.D. Tenn. 1995).

1.1. Election of remedies.

The remedies provided under the Human Rights Act and the Open Meetings Act, § 8-44-106(a), are neither inconsistent nor repugnant and a plaintiff is not, therefore, compelled to elect between them. Forbes v. Wilson County Emergency Dist. 911 Bd., 966 S.W.2d 421 (Tenn. 1998).

2. Punitive Damages.

If the general assembly intended punitive damages to be recoverable under this section, it would have specifically listed them, rather than inferred their availability through a "catch-all" residuary clause such as subdivision (a)(8). England v. Fleetguard, Inc., 878 F. Supp. 1058 (M.D. Tenn. 1995).

The remedies embodied in this section and § 4-21-311 are exclusive, and exclude punitive damages. England v. Fleetguard, Inc., 878 F. Supp. 1058 (M.D. Tenn. 1995).

The Tennessee Court of Appeals does recognize punitive damages, albeit with a high burden of proof on the plaintiff. Wilkinson v. Sally Beauty Co., 896 F. Supp. 741 (M.D. Tenn. 1995).

Punitive damage awards are not available for employment discrimination and retaliation claims under the Tennessee Human Rights Act. Thomas v. Allen-Stone Boxes, Inc., 925 F. Supp. 1316 (W.D. Tenn. 1995).

Punitive damages were not recoverable under the Tennessee Human Rights Act for an employment discrimination claim based on sexual discrimination. Beach v. Ingram & Assocs., 927 F. Supp. 255 (M.D. Tenn. 1996).

Having read this section and § 4-21-311 in pari materia, the court found that punitive damages are not available under subdivision (8) of this section; had the legislature intended punitive damages to be available under subdivision (8) of this section, it would have referred to punitive damages as a remedy in addition to those remedies described in this section. Carver v. Citizen Utils. Co., 954 S.W.2d 34 (Tenn. 1997).

Under the totality of the circumstances, the $ 100,000 awarded for humiliation, embarrassment, and emotional distress was not excessive and would not be disturbed. Watson v. Food Lion, Inc., 147 F. Supp. 2d 883 (E.D. Tenn. 2000).

3. Attorney's Fees.

The plaintiff may qualify as the prevailing party so as to be entitled to attorney's fees even though the plaintiff does not prevail on all of the issues raised on appeal. Forbes v. Wilson County Emergency Dist. 911 Bd., 966 S.W.2d 421 (Tenn. 1998).

4. Relationship to Workers' Compensation Law.

The Tennessee Human Rights Act is the appropriate avenue of relief for employees who suffer injuries as a result of sexual harassment at work. Anderson v. Save-A-Lot Ltd., 989 S.W. 2d 277 (Tenn. 1999).

Collateral References. Availability and scope of punitive damages under state employment discrimination law. 81 ALR5th 367.

Preemption of state-law wrongful discharge claim, not arising from whistleblowing, by § 301(a) of Labor-Management Act of 1947 (29 U.S.C.A. § 185(a)). 184 A.L.R. Fed. 241.

Pre-emption of wrongful discharge cause of action by civil rights laws. 21 A.L.R.5th 1.

Wrongful discharge based on public policy derived from professional ethics codes. 52 A.L.R.5th 405.

4-21-307. Judicial review. — (a) A complainant, respondent or intervenor aggrieved by an order of the commission, including an order dismissing a complaint or stating the terms of a conciliation agreement, may obtain judicial review, and the commission may obtain an order of the court for enforcement of its order, in a proceeding brought in the chancery court or circuit court in which the alleged discriminatory practice, which is the subject of the order, occurred or in which a respondent resides or transacts business.

(b)(1) The proceeding for review or enforcement is initiated by filing a petition in court.

(2) Copies of the appeal shall be served upon all parties of record.

(3) Within thirty (30) days after the service of the petition for appeal upon the commission or its filing by the commission, or within such further time as the court may allow, the commission shall transmit to the court the original or a certified copy of the entire record upon which the order is based, including a transcript of testimony, which need not be printed.

(4) By stipulation of all parties to the review proceeding, the record may be shortened.

(5) The findings of fact of the commission shall be conclusive unless clearly erroneous in view of the probative and substantial evidence on the whole record.

(6) The court has the power to grant such temporary relief or restraining order as it deems just and to enter an order enforcing, modifying and enforcing as modified, or setting aside in whole or in part the order of the commission, or remanding the case to the commission for further proceedings.

(7) All such proceedings shall be heard and determined by the chancery court or circuit court and court of appeals as expeditiously as possible and with lawful precedence over other matters.

(c) If the commission has failed to schedule a hearing in accordance with § 4-21-304 or has failed to issue an order within one hundred eighty (180) days after the complaint is filed, the complainant, respondent or an intervenor may petition the chancery court or circuit court in a county in which the alleged discriminatory practice set forth in the complaint occurs or in which the petitioner resides or has the petitioner's principal place of business for an order directing the commission to take such action. The court shall follow the procedure set forth in subsection (b) so far as applicable.

(d)(1) The court shall not consider any matter not considered by, nor any objection not raised before, the hearing examiner or examiners unless the failure of a party to present such matter to or raise such objection before the hearing examiner or examiners are excused because of good cause shown.

(2) A party may move the court to remand the case to the commission in the interest of justice for the purpose of adducing additional specified material evidence and seeking findings thereon; provided, that the party shows good cause for the failure to adduce such evidence before the commission.

(e)(1) The jurisdiction of the chancery court or circuit court shall be exclusive, and its final judgment or decree shall be subject to review by the court of appeals as provided by the Rules of Civil Procedure.

(2) The commission's copy of the testimony shall be available to all parties for examination without cost during business hours at the commission's office in Nashville.

(f)(1) A proceeding under this section must be initiated within thirty (30) days after a copy of the order of the commission is petitioned or the petition is filed under § 4-21-304.

(2) If no proceeding is so initiated, the commission may obtain a decree of the court of enforcement of its order upon showing that a copy of the petition for enforcement was served on the respondent and the respondent is subject to the jurisdiction of the court. [Acts 1978, ch. 748, § 22; T.C.A., §§ 4-2120, 4-21-120; Acts 1996, ch. 777, §§ 2-5.]

Cited: Bennett v. Steiner-Liff Iron & Metal Co., 826 S.W.2d 119 (Tenn. 1992); England v. Fleetguard, Inc., 878 F. Supp. 1058 (M.D. Tenn. 1995); Burnett v. Tyco Corp., 932 F. Supp. 1039 (W.D. Tenn. 1996).

NOTES TO DECISIONS

ANALYSIS

1. Employment discrimination.
2. —Initiation of proceedings.
3. Election of remedies.

1. Employment Discrimination.

2. —Initiation of Proceedings.

Tennessee law provides three ways in which a victim of alleged employment discrimination may proceed; first of all, he may file administratively through the Tennessee human rights commission, which filing must be done within 180 days of the alleged discriminatory act; if the victim chooses the administrative route, the second way to proceed would follow the final decision of the commission, which would be to file a complaint with the chancery court to review the decision of the administrative agency under this section; and the third way to proceed is to file a direct action in the chancery court. Hoge v. Roy H. Park Broadcasting of Tenn., Inc., 673 S.W.2d 157 (Tenn. Ct. App. 1984).

3. Election of Remedies.

The anti-discrimination act forces an election between the administrative and judicial remedy, at least where an aggrieved individual has initiated the administrative process and pursued it to an administrative conclusion; once the administrative process has been pursued past the initial administrative conclusion that no actionable violation exists, the only way to get to court is through an administrative appeal. Puckett v. Tennessee Eastman Co., 889 F.2d 1481 (6th Cir. 1989).

4-21-308. Access to records. — (a) In connection with an investigation of a complaint filed under this chapter, the commission or its designated representative at any reasonable time may request access to premises, records and documents relevant to the complaint and the right to examine a photograph and copy evidence.

(b) Every person subject to this chapter shall:

(1) Make and keep records relevant to the determination of whether discriminatory practices have been or are being committed;

(2) Preserve such records for such periods; and

(3) Make such reports therefrom, as the commission shall prescribe by regulation or order, as reasonably necessary, or appropriate for the enforcement of this chapter or the regulation or orders thereunder.

(c) So as to avoid undue burdens on persons subject to this chapter, records and reports required by the commission under this section shall conform as near as may be to similar records and reports required by federal law and the laws of other states and to customary recordkeeping practice.

(d) If a person fails to permit access, examination, photographing or copying or fails to make, keep or preserve records or make reports in accordance with this section, the chancery court or circuit court for the county in which such person is found, resides, or has such person's principal place of business, upon application of the commission, may issue an order requiring compliance.

(e) The commission, by regulation, shall require each person subject to this chapter who controls an apprenticeship or other training program to keep all records reasonably necessary to carry out the purpose of the chapter, including, but not limited to, a list of applicants who wish to participate in such program, including the chronological order in which applications were received, and shall furnish to the commission upon request, a detailed description of the manner in which persons are selected to participate in the apprenticeship or other training programs.

(f) A person who believes that the application to it of a regulation or order issued under this section would result in undue hardship may apply to the commission for an exemption from the application of the regulation or order. If

the commission finds the application of the regulation or order to the person in question would impose an undue hardship, the commission may grant appropriate relief. [Acts 1978, ch. 748, § 23; T.C.A., §§ 4-2121, 4-21-121; Acts 1996, ch. 777, § 6.]

4-21-309. Subpoenas. — (a)(1) Upon written application to the commission, a party to a proceeding is entitled as of right to the issuance of subpoenas for deposition or hearing in the name of the commission by an individual designated pursuant to its rules requiring attendance and the giving of testimony by witnesses and the production of documents.

(2) A subpoena so issued shall show on its face the name and address of the party at whose request the subpoena is directed.

(3) On petition of the person to whom the subpoena is directed and notice to the requesting party, the commission or an individual designated pursuant to its rules may vacate or modify the subpoena.

(4) Depositions of witnesses may be taken as prescribed by the Tennessee Rules of Civil Procedure.

(5) Witnesses whose depositions are taken, or who are summoned before the commission or its agents, will be entitled to the same witness and mileage fees as are paid to the witnesses subpoenaed in chancery courts of the state.

(b) If a person fails to comply with a subpoena issued by the commission, the chancery court or circuit court of the county in which the person is found, resides, or has the person's principal place of business, upon application of the commission or the party requesting the subpoena, may issue an order requiring compliance. In any proceeding brought under this section, the court may modify or set aside the subpoena. [Acts 1978, ch. 748, § 24; T.C.A., §§ 4-2122, 4-21-122; Acts 1996, ch. 777, § 7.]

Cross-References. Witness compensation, title 24, ch. 4.

Cited: State, Dep't of Revenue v. Moore, 722 S.W.2d 367 (Tenn. 1986).

4-21-310. Resistance to, obstruction, etc., of commission. — Any person who willfully resists, prevents, impedes or interferes with the performance of a duty or the exercise of a power by the commission or one (1) of its members or representatives commits a Class C misdemeanor. [Acts 1978, ch. 748, § 25; T.C.A., §§ 4-2123, 4-21-123; Acts 1989, ch. 591, § 113.]

Cross-References. Penalty for Class C misdemeanor, § 40-35-111.

4-21-311. Additional remedies preserved. — (a) Any person injured by any act in violation of the provisions of this chapter shall have a civil cause of action in chancery court or circuit court.

(b) In such an action, the court may issue any permanent or temporary injunction, temporary restraining order, or any other order and may award to the plaintiff actual damages sustained by such plaintiff, together with the costs of the lawsuit, including a reasonable fee for the plaintiff's attorney of record, all of which shall be in addition to any other remedies contained in this chapter.

(c) In cases involving discriminatory housing practices, the court may award punitive damages to the plaintiff, in addition to the other relief specified in this section and this chapter. In addition to the remedies set forth in this section, all remedies described in § 4-21-306, except the civil penalty described in § 4-21-306(a)(9), shall be available in any lawsuit filed pursuant to this section.

(d) A civil cause of action under this section shall be filed in chancery court or circuit court within one (1) year after the alleged discriminatory practice ceases, and any such action shall supersede any complaint or hearing before the commission concerning the same alleged violations, and any such administrative action shall be closed upon such filing. [Acts 1978, ch. 748, § 26; T.C.A., §§ 4-2124, 4-21-124; Acts 1989, ch. 374, § 1; 1992, ch. 1027, § 8; 1996, ch. 777, §§ 8, 9.]

Compiler's Notes. This section may be affected by § 9-1-116, concerning entitlement to funds, absent appropriation.

Cross-References. Remedies, § 4-21-306.

Law Reviews. Age Discrimination: A Growth Industry (Charles H. Anderson), 25 No. 6 Tenn. B.J. 24 (1989).

Tennessee Human Rights Act: Court of Appeals addresses limitations period of THRA (Timothy S. Bland and Licia M. Williams), 38 No. 2 Tenn. B.J. 20 (2002).

Cited: Whitfield v. City of Knoxville, 756 F.2d 455 (6th Cir. 1985); Rogers v. Stratton Indus., Inc., 798 F.2d 913 (6th Cir. 1986); Harman v. Moore's Quality Snack Foods, Inc., 815 S.W.2d 519 (Tenn. Ct. App. 1991); Bennett v. Steiner-Liff Iron & Metal Co., 826 S.W.2d 119 (Tenn. 1992); Easter v. Martin Marietta Energy Sys., Inc., 823 F. Supp. 489 (E.D. Tenn. 1991); Tuck v. HCA Health Servs. of Tenn., Inc., 7 F.3d 465 (6th Cir. 1993); Hays v. Patton-Tully Transp. Co., 844 F. Supp. 1221 (W.D. Tenn. 1993); Webster v. Tennessee Bd. of Regents, 902 S.W.2d 412 (Tenn. Ct. App. 1995); Johnson v. South Cent. Human Resource Agency, 926 S.W.2d 951 (Tenn. Ct. App. 1996); Stefanovic v. University of Tenn., 935 F. Supp. 944 (E.D. Tenn. 1996); Spicer v. Beaman Bottling Co., 937 S.W.2d 884 (Tenn. 1996); Forbes v. Wilson County Emergency Dist. 911 Bd., 966 S.W.2d 421 (Tenn. 1998); Spann v. Abraham, 36 S.W.3d 452 (Tenn. Ct. App. 1999); Wade v. Knoxville Utils. Bd., 259 F.3d 452, 2001 Fed. App. 246 (6th Cir. 2001); Fahrner v. SW Mfg., Inc., 48 S.W.3d 141 (Tenn. 2001); Jessee v. Am. Gen. Life & Accident Ins. Co., — S.W.3d —, 2003 Tenn. App. LEXIS 52 (Tenn. Ct. App. Jan. 24, 2003).

NOTES TO DECISIONS

Analysis

1. "Actual Damages."

The term "actual damages" as used in this section does not include compensatory damages for injuries, including emotional injuries such as "serious embarrassment and humiliation." Belcher v. Sears, Roebuck & Co., 686 F. Supp. 671 (M.D. Tenn. 1988).

2. Punitive Damages.

The remedies embodied in § 4-21-306 and this section are exclusive, and exclude punitive damages, except in such cases for which such damages are expressly authorized. England v. Fleetguard, Inc., 878 F. Supp. 1058 (M.D. Tenn. 1995).

The Tennessee Court of Appeals does recognize punitive damages, albeit with a high burden of proof on the plaintiff. Wilkinson v. Sally Beauty Co., 896 F. Supp. 741 (M.D. Tenn. 1995).

Punitive damage awards are not available for employment discrimination and retaliation claims under the Tennessee Human Rights Act. Thomas v. Allen-Stone Boxes, Inc., 925 F. Supp. 1316 (W.D. Tenn. 1995).

Punitive damages were not recoverable under the Tennessee Human Rights Act for an employment discrimination claim based on sexual discrimination. Beach v. Ingram & Assocs., 927 F. Supp. 255 (M.D. Tenn. 1996).

Having read § 4-21-306 and this section in pari materia, the court found that punitive damages are not available under § 4-21-306(8); had the legislature intended punitive damages to be available under § 4-21-306(8), it would have referred to punitive damages as a remedy

in addition to those remedies described in § 4-21-306. Carver v. Citizen Utils. Co., 954 S.W.2d 34 (Tenn. 1997).

3. Employment Discrimination.

4. Initiation of Proceedings.

Tennessee law provides three ways in which a victim of alleged employment discrimination may proceed; first of all, he may file administratively through the Tennessee human rights commission, which filing must be done within 180 days of the alleged discriminatory act; if the victim chooses the administrative route, the second way to proceed would follow the final decision of the commission, which would be to file a complaint with the chancery court to review the decision of the administrative agency; the third way to proceed is to file a direct action in the chancery court under this section. Hoge v. Roy H. Park Broadcasting of Tenn., Inc., 673 S.W.2d 157 (Tenn. Ct. App. 1984).

5. Administrative Review.

Administrative review is not a condition precedent to maintaining direct action in chancery court under this section. Hoge v. Roy H. Park Broadcasting of Tenn., Inc., 673 S.W.2d 157 (Tenn. Ct. App. 1984).

6. Statutes of Limitation.

An action alleging age discrimination in employment, which was filed as a direct action in the chancery court under this section, was an action alleging in substance a federal civil rights statutory violation, and the statute of limitations in § 28-3-104 applied, rather than either the limitations in § 4-21-302 or the general limitations in the federal act. Hoge v. Roy H. Park Broadcasting of Tenn., Inc., 673 S.W.2d 157 (Tenn. Ct. App. 1984).

Where the substance of the complaint alleges a federal civil rights statutory violation, Tennessee's general statute of limitations for actions brought in state courts (§ 28-3-104) is applicable in the absence of a specific statute of limitation. Hoge v. Roy H. Park Broadcasting of Tenn., Inc., 673 S.W.2d 157 (Tenn. Ct. App. 1984).

Section 28-3-104, the general statute of limitations for claims asserting a violation of federal civil rights, is applicable under this section. Puckett v. Tennessee Eastman Co., 889 F.2d 1481 (6th Cir. 1989).

Where plaintiff brought her claim by the administrative route set forth in § 4-21-302, followed it through to the conciliation stage, and did not file a complaint in circuit court until after expiration of the limitations period, the court action was barred. Puckett v. Tennessee Eastman Co., 889 F.2d 1481 (6th Cir. 1989).

Claimants who pursued a judicial action, like those who chose to pursue an administrative complaint, enjoyed the remedies enumerated in § 4-21-306. England v. Fleetguard, Inc., 878 F. Supp. 1058 (M.D. Tenn. 1995).

The one year limitations period for bringing a direct court action under this section was not tolled during the pendency of administrative charges filed with the Tennessee Human Rights Commission. Burnett v. Tyco Corp., 932 F. Supp. 1039 (W.D. Tenn. 1996).

The one-year limitations period for claims of discriminatory practice and retaliatory discharge commenced when plaintiff received oral notice of defendant's decision to terminate his contract, not from the date he was provided written notice of the decision in accordance with his employment agreement. Weber v. Moses, 938 S.W.2d 387 (Tenn. 1996).

Application of the "continuing violation" theory was justified where plaintiff was able to show that a particular demotion that was within the limitations period was linked to a series of related discriminatory acts. Frazier v. Heritage Fed. Bank for Sav., 955 S.W.2d 633 (Tenn. Ct. App. 1997).

Application of the "continuing violation" theory was justified where plaintiff was able to show that a particular demotion that was within the limitations period was linked to a series of related discriminatory acts. Frazier v. Heritage Fed. Bank for Sav., 955 S.W.2d 633 (Tenn. Ct. App. 1997).

Promotion or hiring from an allegedly tainted promotions roster is not a "continuing act" for purposes of timely filing, but is merely the effect of previous discrimination. Cox v. City of Memphis, 230 F.3d 199, 2000 Fed. App. 370 (6th Cir. 2000).

Because plaintiff failed to show that any acts of sexual harassment occurred within one year prior to date of filing, the plaintiff's state law claims for quid pro quo and hostile environment sexual harassment under the Tennessee Human Rights Act were barred by the statute of limitations; however, plaintiff's claim of retaliation did fall within the limits of the continuing violation doctrine. Reed v. Cracker Barrel Old Country Store, Inc., 133 F. Supp. 2d 1055 (M.D. Tenn. 2000).

The statute of limitations in T.C.A. § 4-21-311(d) concerning an employee's age discrimination claim began to run when the employee received an unequivocal notice of termination of employment, and was not extended by the discovery rule or fraudulent concealment. Holcomb v. Sverdrup Tech., — S.W.3d —, 2001 Tenn. App. LEXIS 829 (Tenn. Ct. App. Nov. 8, 2001).

To the extent a former employee sought recovery of discrete retaliatory or discriminatory acts under the Tennessee Human Rights Act, T.C.A. § 4-21-101 et seq., which occurred more than one year from the filing of the complaint, those claims were barred by the applicable statute of limitations. Martin v. Boeing-Oak

Ridge Co., 244 F. Supp. 2d 863 (E.D. Tenn. 2002).

7. Election of Remedies.

The anti-discrimination act forces an election between the administrative and judicial remedy, at least where an aggrieved individual has initiated the administrative process and pursued it to an administrative conclusion; once the administrative process has been pursued past the initial administrative conclusion that no actionable violation exists, the only way to get to court is through an administrative appeal. Puckett v. Tennessee Eastman Co., 889 F.2d 1481 (6th Cir. 1989).

8. Right to Jury Trial.

A jury may try the factual issues in a case brought in chancery court under this section despite the fact that the general assembly did not specify in the Human Rights Act whether a jury could be demanded. Hannah v. Pitney Bowes, Inc., 739 F. Supp. 1131 (E.D. Tenn. 1989).

Actual damages mean compensatory damages under this section and are not limited to equitable relief; moreover, § 21-1-103 allows a party to invoke a broad right to a jury trial, even in many cases of an equitable nature, and the plaintiff has properly made such a demand in this case. Hannah v. Pitney Bowes, Inc., 739 F. Supp. 1131 (E.D. Tenn. 1989).

9. Attorney Fees.

Attorney fees provided for in this section are for the attorney and are not a windfall damage award to the plaintiff; thus, a client did not have a cause of action based on her attorney's failure to maintain time records in connection with a discrimination action. Wood v. Parker, 901 S.W.2d 374 (Tenn. Ct. App. 1995).

4-21-312. Election of civil action. — (a) The provisions of this section apply only in cases involving discriminatory housing practices.

(b) Within ninety (90) days after a complaint is filed, if the commission has determined that there is reasonable cause to believe that the respondent has engaged in a discriminatory housing practice and if the complaint has not been resolved through a conciliation agreement, the commission shall notify the complainant and the respondent in writing that they may elect to have the claims and issues of the complaint decided in a civil action commenced and maintained by the commission. Either the complainant or the respondent may make such an election by notifying the commission of the complainant's or respondent's desire to do so. A party shall make an election for a civil action no later than twenty (20) days after receiving notice of permission to do so.

(c) If an election is made under this section, no later than sixty (60) days after the election is made, the commission shall commence a civil action in the chancery court or circuit court in a county in which the subject of the complaint occurs, or in a county in which a respondent resides or has the respondent's principal place of business.

(d) In a civil action brought under this section, the court may grant relief as it deems appropriate, including any permanent or temporary injunction, temporary restraining order, or other equitable relief, and may award to any person compensatory and punitive damages. Parties to a civil action brought pursuant to this section shall have the right to a jury trial. [Acts 1992, ch. 1027, § 9; 1996, ch. 777, § 10.]

Section to Section References. This section is referred to in § 4-21-304.

Part 5—Discrimination in Public Accommodations

4-21-501. Discrimination prohibited. — Except as otherwise provided in this chapter, it is a discriminatory practice for a person to deny an individual the full and equal enjoyment of the goods, services, facilities, privileges, advantages and accommodations of a place of public accommodation, resort or

amusement, as defined in this chapter, on the grounds of race, creed, color, religion, sex, age or national origin. [Acts 1978, ch. 748, § 13; T.C.A., § 4-2111; Acts 1980, ch. 732, § 9; T.C.A., § 4-21-111.]

Section to Section References. This part is referred to in § 68-14-607.

Law Reviews. Perceived Disabilities, Social Cognition, and "Innocent Mistakes," 55 Vand. L. Rev. 481 (2002).

Proving an Employer's Intent: Disparate Treatment Discrimination and the Stray Remarks Doctrine After Reeves v. Sanderson Plumbing Products, 55 Vand. L. Rev. 219 (2002).

The Fair Housing Amendments Act of 1988: The Second Generation of Fair Housing (James A. Kushner), 42 Vand. L. Rev. 1049 (1989).

Cited: Lindsey v. Allstate Ins. Co., 34 F. Supp.2d 636 (W.D. Tenn. 1999).

Cited: Arnett v. Domino's Pizza I, L.L.C., — S.W.3d —, 2003 Tenn. App. LEXIS 514 (Tenn. Ct. App. July 24, 2003).

NOTES TO DECISIONS

ANALYSIS

1. Burden of proof.
2. Prima facie case.
3. Discrimination not established.

1. Burden of Proof.

In a public accommodations case under this chapter, the plaintiff bears the initial burden of establishing a prima facie case, and, if the plaintiff succeeds, the burden shifts to the defendant to proffer a legitimate non-discriminatory reason for the challenged action. Phillips v. Interstate Hotels Corp., 974 S.W.2d 680 (Tenn. 1998).

2. Prima Facie Case.

A prima facie case of discrimination under T.C.A. § 4-21-501 cannot be established absent a showing of either a denial of access or disparate treatment designed to deny or deter access. Phillips v. Interstate Hotels Corp., 974 S.W.2d 680 (Tenn. 1998).

3. Discrimination Not Established.

Employee failed to establish a prima facie case of discrimination based on allegations that the employee was forced by employer to play music in a hotel lounge that would induce black patrons to leave, since the employee's actions did not subject different classes to disparate treatment where all patrons were subjected to the same music selections. Phillips v. Interstate Hotels Corp., 974 S.W.2d 680 (Tenn. 1998).

Collateral References. Validity, construction, and application of state enactment, order, or regulation expressly prohibiting sexual orientation discrimination. 82 ALR5th 1.

4-21-502. Advertisement indicating discriminatory policy. — It is a discriminatory practice for a person, directly or indirectly, to publish, circulate, issue, display or mail or cause to be published, circulated, issued, displayed or mailed a written, printed, oral or visual communication, notice or advertisement which indicates that the goods, services, facilities, privileges, advantages and accommodations or a place of public accommodation, resort or amusement will be refused, withheld from or denied an individual on account of the individual's race, creed, color, religion, sex or national origin; or that the patronage of, or presence at, a place of public accommodation, resort or amusement, of an individual on account of the individual's race, creed, color, religion, sex, age or national origin is objectionable, unwelcome, unacceptable or undesirable. [Acts 1978, ch. 748, § 14; T.C.A., § 4-2112; Acts 1980, ch. 732, § 9; T.C.A., § 4-21-112.]

4-21-503. Segregation on basis of sex. — Nothing in this part shall prohibit segregation on the basis of sex of bathrooms, health clubs, rooms for

sleeping or changing clothes, or other places of public accommodation the commission specifically exempts on the basis of bona fide considerations of public policy. [Acts 1978, ch. 748, § 15; T.C.A., §§ 4-2113, 4-21-113.]

Part 6—Discrimination in Housing and Financing

4-21-601. Discriminatory housing practices generally. — (a) It is a discriminatory practice for any person because of race, color, creed, religion, sex, handicap, familial status or national origin, to:

(1) Refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, real property or a housing accommodation to a person;

(2) Discriminate against any person in the terms, conditions, or privileges of sale or rental of real property or a housing accommodation, or in the provision of services or facilities in connection therewith;

(3) Refuse to receive or transmit a bona fide offer to purchase, rent or lease real property or a housing accommodation from a person;

(4) Represent to a person that real property or a housing accommodation is not available for inspection, sale, rental or lease when in fact it is so available, or to refuse to permit a person to inspect real property or a housing accommodation;

(5) Make, print, publish, circulate, post or mail or cause to be made, printed, published, circulated, posted or mailed a notice, statement, advertisement or sign, or use a form of application for the purchase, rental or lease of real property or a housing accommodation, or make a record of inquiry in connection with the prospective purchase, rental or lease of real property or a housing accommodation, which indicates, directly or indirectly, a limitation, specification or discrimination as to race, color, creed, religion, sex, handicap, familial status or national origin or an intent to make such a limitation, specification or discrimination;

(6) Offer, solicit, accept, use or retain a listing of real property or a housing accommodation for sale, rental or lease with the understanding that a person may be discriminated against in the sale, rental or lease of that real property or housing accommodation or in the furnishing of facilities or services in connection therewith; or

(7) Deny any person access to, or membership or participation in, any multiple-listing services, real estate brokers' organization or other service, organization or facility relating to the business of selling or renting dwellings, or to discriminate against such person in the terms or conditions of such access, membership or participation.

(b)(1) It is a discriminatory practice for any person to:

(A) Discriminate in the sale or rental of, or otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of:

(i) The buyer or renter;

(ii) A person residing in or intending to reside in the dwelling after it is so sold, rented or made available; or

(iii) Any person associated with the buyer or renter; or

(B) Discriminate against any person in the terms, conditions or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a handicap of:

(i) The person;

(ii) A person residing in or intending to reside in the dwelling after it is so sold, rented or made available; or

(iii) Any person associated with the person.

(2) For purposes of this subsection, "discrimination" includes:

(A) A refusal to permit, at the expense of the handicapped person, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises; except that, in the case of a rental, no modification need be permitted unless the renter first agrees to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted, unless previously negotiated with the landlord;

(B) A refusal to make reasonable accommodations in rules, policies, practices or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling; or

(C) In connection with the design and construction of covered multifamily dwellings for first occupancy after March 13, 1991, a failure to design and construct those dwellings in such a manner that:

(i) The dwellings have at least one (1) building entrance on an accessible route, unless it is impractical to do so because of terrain or unusual site characteristics; or

(ii) With respect to dwellings with a building entrance on an accessible route:

(*a*) The public use and common use portions of such dwellings are readily accessible to and usable by handicapped persons;

(*b*) All the doors designed to allow passage into and within all premises within such dwellings are sufficiently wide to allow passage by handicapped persons in wheelchairs; and

(*c*) All premises within such dwellings contain the following features of adaptive design:

(*1*) An accessible route into and through the dwelling;

(*2*) Light switches, electrical outlets, thermostats and other environmental controls in accessible locations;

(*3*) Reinforcements in bathroom walls to allow later installation of grab bars; and

(*4*) Usable kitchens and bathrooms, such that an individual in a wheelchair can maneuver about the space.

(3) Compliance with the appropriate requirements of the American National Standard for buildings and facilities providing accessibility and usability for physically handicapped people (commonly cited as "ANSI A117.1") suffices to satisfy the requirements of subdivision (b)(2)(C)(ii).

(4) As used in this subsection, "covered multifamily dwellings" means:

(A) Buildings consisting of four (4) or more units if such buildings have one (1) or more elevators; and

(B) Ground floor units in other buildings consisting of four (4) or more units.

(5) Nothing in this subsection requires that a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or

safety of other individuals or whose tenancy would result in substantial physical damage to the property of others.

(c) It is a discriminatory practice for a person in the business of insuring against hazards to refuse to enter into, or discriminate in the terms, conditions, or privileges of, a contract of insurance against hazards to a housing accommodation or real property because of the race, color, creed, religion, sex or national origin of the person owning, or residing in or near the housing accommodations or real property.

(d) It is a discriminatory practice for a person to coerce, intimidate, threaten or interfere with any person in the exercise or enjoyment of, or on account of such person's having exercised or enjoyed, or on account of such person's having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by the provisions of this chapter.

(e) This section may also be enforced by appropriate civil action. [Acts 1984, ch. 1007, § 4; T.C.A., § 4-21-127; Acts 1990, ch. 937, §§ 2, 3; 1992, ch. 1027, §§ 10, 11.]

Section to Section References. This section is referred to in § 4-21-607.

Attorney General Opinions. Manager's refusal to lease upstairs apartments to families with children violates law, OAG 94-135 (11/21/94).

Applicability of subsection (d) to persons not involved in real estate transactions, OAG 99-046 (3/1/99).

Effect of public advertisement on owner's exemption from prohibitions, OAG 99-046 (3/1/99).

Cited: Justice v. Pendleton Place Apts., 40 F.3d 139, 1994 Fed. App. 390 (6th Cir. 1994); Lindsey v. Allstate Ins. Co., 34 F. Supp.2d 636 (W.D. Tenn. 1999).

NOTES TO DECISIONS

ANALYSIS

1. Scope.
2. —Commercial leases.

1. Scope.

2. —Commercial Leases.

The Tennessee Human Rights Act (THRA) plainly prohibits discrimination with regard to housing accommodations or real property; a commercial lease clearly falls within the definition of "real property." Woods v. Herman Walldorf & Co., 26 S.W.3d 868 (Tenn. Ct. App. 1999).

Collateral References. Validity, construction, and application of state enactment, order, or regulation expressly prohibiting sexual orientation discrimination. 82 ALR5th 1.

4-21-602. Exemption from housing provisions. — (a) Nothing in § 4-21-601 shall apply to:

(1) The rental of housing accommodations in a building which contains housing accommodations for not more than two (2) families living independently of each other, if the owner or a member of the owner's family resides in one (1) of the housing accommodations;

(2) The rental of one (1) room or one (1) rooming unit in a housing accommodation by an individual if such individual or a member of such individual's family resides therein, or, as regards to sex, rooms or rental units where the tenants would be required to share a common bath;

(3) A religious organization, association, or society, or any nonprofit institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association, or society, which limits the sale, rental or occupancy of dwellings which it owns or operates for other than a commercial purpose to persons of the same religion, or which gives preference to such persons, unless membership in such religion is restricted on account of race, color, or national origin;

(4) As regards to sex, the rental of housing accommodations of single-sex dormitory rental properties, including, but not limited to, those dormitories operated by higher educational institutions.

(b) Nothing in this chapter shall require a real estate operator to negotiate with any individual who has not shown evidence of financial ability to consummate the purchase or rental of a housing accommodation.

(c) Nothing in subsection (a) shall prohibit the use of attorneys, escrow agents, abstractors, title companies and other such professional assistance as necessary to perfect or transfer the title.

(d)(1) Nothing in this part limits the applicability of any reasonable local, state or federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling. Nor does any provision in this part regarding familial status apply with respect to dwellings provided under any state or federal program specifically designed and operated to assist elderly persons, as defined in the state or federal program, or to housing for older persons.

(2) As used in this subsection, "housing for older persons" means housing communities consisting of dwellings:

(A)(i) Intended for, and at least ninety percent (90%) occupied by, at least one (1) person fifty-five (55) years of age or older per unit;

(ii) Providing significant facilities and services specifically designed to meet the physical or social needs of such persons; and

(iii) Publishing and adhering to policies and procedures which demonstrate an intent by the owner or manager to provide housing for persons fifty-five (55) years of age or older;

(B) Intended for and occupied solely by persons sixty-two (62) years of age or older.

(3) Nothing in this part prohibits conduct against a person because such person has been convicted by any court of competent jurisdiction of the illegal manufacture or distribution of a controlled substance as defined in § 102 of the Controlled Substances Act (21 U.S.C. § 802), or as defined in the Tennessee Drug Control Act, compiled in title 39, chapter 17, part 4. [Acts 1984, ch. 1007, § 5; T.C.A., § 4-21-128; Acts 1990, ch. 937, § 4; 1992, ch. 1027, §§ 12-15.]

Attorney General Opinions. Effect of public advertisement on owner's exemption from prohibitions, OAG 99-046 (3/1/99).

4-21-603. Blockbusting. — It is a discriminatory practice for a real estate operator, a real estate broker, a real estate salesperson, a financial institution, an employee of any of these, or any other person, for the purpose of inducing a real estate transaction from which such person may benefit financially to:

(1) Represent that a change has occurred or will or may occur in the composition with respect to race, color, creed, religion, sex, handicap, familial status or national origin of the owners or occupants in the block, neighborhood or area in which the real property is located; or

(2) Represent that this change will or may result in the lowering of property values, an increase in criminal or antisocial behavior, or a decline in the quality of schools in the block, neighborhood or area in which the real property is located. [Acts 1984, ch. 1007, § 6; T.C.A., § 4-21-129; Acts 1992, ch. 1027, § 16.]

Section to Section References. This section is referred to in § 4-21-607.

4-21-604. Restrictive covenants and conditions. — (a) Every provision in an oral agreement or a written instrument relating to real property which purports to forbid or restrict the conveyance, encumbrance, occupancy or lease thereof to individuals of a specified race, color, creed, religion, sex or national origin is void.

(b) Every condition, restriction or prohibition, including a right of entry or possibility of reverter, which directly or indirectly limits the use or occupancy of real property on the basis of race, color, creed, religion, sex or national origin is void, except a limitation of use on the basis of religion of real property held by a religious institution or organization or by a religious or charitable organization operated, supervised, or controlled by a religious institution or organization, and used for religious or charitable purposes.

(c) It is a discriminatory practice to insert in a written instrument relating to real property a provision that is void under this section or to honor or attempt to honor such a provision in the chain of title. [Acts 1984, ch. 1007, § 7; T.C.A., § 4-21-130.]

4-21-605. Agency no defense in proceeding against realtor. — It shall be no defense to a violation of this chapter by a real estate operator, real estate broker, real estate salesperson, financial institution, or other person subject to the provisions of this chapter that the violation was requested, sought or otherwise procured by a person not subject to the provisions of this chapter. [Acts 1984, ch. 1007, § 8; T.C.A., § 4-21-131.]

4-21-606. Residential real estate-related transactions. — (a) It is an unlawful practice for any person or other entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in making available such transaction, or in the terms and conditions of such transaction, because of race, color, creed, religion, sex, handicap, familial status or national origin.

(b) As used in this section, "residential real estate-related transaction" means:

(1) The making or purchasing of loans or providing financial assistance:

(A) For purchasing, constructing, improving, repairing, or maintaining a dwelling;

(B) Where the security is residential real estate; or

(2) The selling, brokering, or appraising of residential real estate. [Acts 1984, ch. 1007, § 9; T.C.A., § 4-21-132; Acts 1992, ch. 1027, § 17.]

4-21-607. Violations by realtors — Notice to real estate commission. — Where a real estate broker or a real estate salesperson has failed to comply with any order issued by the commission or has been found to have committed a discriminatory housing practice in violation of § 4-21-601 or § 4-21-603, the commission shall notify in writing the real estate commission of the failure to comply or the violation. [Acts 1984, ch. 1007, § 10; T.C.A., § 4-21-133.]